



Violence against Women with Special Reference to Domestic Violence Act, 2005.

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“Domestic violence is a burden on numerous sectors of the social system and quietly, yet dramatically, affects the development of a nation... batterers cost nations fortunes in terms of law enforcement, health care, lost labor and general progress in development. These costs do not only affect the present generation; what begins as an assault by one person on another, reverberates through the family and the community into the future”.

- **Zimmerman C. Plates in a basket will rattle: Domestic violence in Cambodia, Phnom Pehn. Cambodia: The Asia Foundation; 1994**

Abstract:

India, as a country with much diversity in religions, economic classes, social caste system, is no exception so far ‘Domestic Violence’ is concerned. In 2005, Protection of Women from Domestic Violence Act was passed to curb the menace of ‘Domestic Violence’ and empowering women with a legal weapon to fight against it. The paper seeks to assess the effectiveness of this new legislation and examines specifically what kinds of people bring actions under this new gender-specific law. This paper emphasizes to examine violence against women emanates from the social hypothesis of superiority of men over women. The incidence of violence prevalent in manwoman relationship takes place in the context of the family, state and society. The paper draws attention towards the present scenario in the society of domestic violence and shows the causes of the domestic violence in India against the women and also its various types. The author elaborates the objective and impact of law in the society. The author also attempts to explore the landmark and the mundane aspects of the Act by examining the implementation of the same through the relation between the formal legal sphere and the social sphere. It aims to examine how and in what ways has the formal domestic violence law fostered a legal culture engendering legal literacy of ordinary women and men. However, it is concluded that the Domestic Violence Act has failed to reduce Domestic Violence cases not only during lockdown but also pre- and post-lockdown in India. This paper suggests for a comprehensive study, utilizing the data available by government organizations that record DV complaints. Alongside, it argues for further rigorous amendment of Domestic Violence Act, 2005.

DOI Number:10.14704/nq.2022.20.8.NQ44457

NeuroQuantology 2022; 20(8): 4230-4237

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1. Introduction

Domestic violence is sadly a reality in Indian society, a truism. In the Indian patriarchal setup, it became an acceptable practice to abuse women. There may be many reasons for the occurrence of domestic violence. From a feminist standpoint, it could be said that the occurrence of domestic violence against women arises out of the patriarchal setup, the stereotyping of gender roles and the distribution of power, real or perceived, in society. Following such ideology, men are believed to be stronger than women and more powerful. They control women and their lives and as a result of this power play, they may hurt women with impunity. The role of the woman is to accept her 'fate' and the violence employed against her meekly. For long, the fairer sex has suffered at the hands of men, the exploitation ranges from physical to intangible abuse like mental and psychological torture. Women have been treated as childbearing machines, and if I may, then preferably male childbearing machines, push-over, to nothing but animals at the hands of men. Domestic violence is one of the gravest and the most pervasive human rights violation. For too long now, women have accepted it as their destiny or have just acquiescence their right to raise their voice, perhaps, because of the justice system or the lack of it or because they are vulnerable, scared of being ostracized by their own because domestic violence remains a taboo for most women who suffer from it or for other reasons best known to them. But not anymore. Women gear up-take control because of the domestic violence act, 2005.

The Protection of Women from Domestic Violence Act (or the Domestic Violence Act) is a laudable piece of legislation that was enacted in 2005 to tackle this problem. The Act in theory goes a long way towards protection of women in the domestic setup. It is the first substantial

step in the direction of vanquishing the questionable public/private distinction traditionally maintained in the law, which has been challenged by feminists' time and again. Admittedly, women could earlier approach the Courts under the Indian Penal Code (IPC) in cases of domestic violence. However, the kinds of domestic violence contemplated by this Act, and the victims recognized by it, make it more expansive in scope than the IPC. The IPC never used the term domestic violence to refer to this objectionable practice. In fact, the only similar class of offences addressed by the IPC dealt with cruelty to married women. All other instances of domestic violence within the household had to be dealt with under the offences that the respective acts of violence constituted under the IPC without any regard to the gender of the victim. This posed a problem especially where the victims were children or women who were defendant on the assailant. In fact, even where the victim was the wife of the assailant and could approach the Courts under S.498A of the IPC, she would presumably have to move out of her matrimonial home to ensure her safety or face further violence as retaliation. There was no measure in place to allow her to continue staying in her matrimonial home and yet raise her voice against the violence perpetrated against her. This, together with many other problems faced by women in the household, prompted this enactment. This commentary focuses on the constitutional perspectives of this progressive legislation.

2. The Domestic Violence Act: A Brief

The patriarchal setup has been deeply rooted in Indian society since time immemorial. It may be believed that this system laid the foundation stone for the abuse of women. Domestic violence affects women from every social background irrespective of their age, religion, caste, or class. It is a violent crime that not only affects a person and her children but also has

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wider implications for society. Although the root behind the crime is hard to decipher, certain reasons behind the violence can be traced to the stereotyping of gender roles, and the distribution of power.

The definition of violence has evolved over the years to an extent it not only includes physical forms of violence but also emotional, mental, financial, and other forms of cruelty. Thus, the term domestic violence includes acts which harm or endangers the health, safety, life, limb, or wellbeing (mental or physical) of the victim, or tends to do so, and includes causing: physical abuse, sexual abuse, verbal abuse, emotional abuse, and economic abuse, perpetrated by any person who is or was in a domestic relationship with the victim.

Before the enactment of the Protection of Women from Domestic Violence Act, 2005 (“DV Act”), the victim could approach the court under Section 498-A of the Penal Code, 1860 which provides for ‘husband or relative of husband of a woman subjecting her to cruelty’ wherein only a certain set of offence dealing with cruelty to married women was the only recourse. All other instances of domestic violence within the household had to be dealt with under the offences that the respective acts of violence constituted under the IPC without any regard to the gender of the victim.

Need for The Act: In 1983, by incorporating section 498-A into the Indian Penal Code, domestic abuse was accepted as a special criminal offence. This section is about the cruelty against a woman by her husband or in-laws. The parliament had passed a Domestic Violence Protection of Women Bill in 2001, entitled “Protecting and ensuring the rights of women victims of any violence in the family, including related or incidental issues”. Sadly, the Indian Constitution does not currently contain a single legislation that can deal

exclusively with all types of domestic abuse. Such a law in the country is urgently needed. Sections 498-A and DVA, 2005 were also misused because of a narrow description of married women’s cruelty.

In domestic violence, only problems relating to marriage and divorce were considered a family law issue. The law deals with marriage and divorce, but not with what happens between marriage and divorce. This meant that the topic of violence against women could be raised only in the form of divorce in the marital home. Until 1984 on, when Section 498A was added to the Indian Penal Code and a crime was committed against his wife by the husband and relatives. These issues were dealt with by the criminal law. This proved to be an inadequate remedy, however, because it was more based on fear of arrest than on the rights of women. While domestic violence was invariably associated with the displacement from the marriage home, the right to live in the marriage house was not legally recognized. The courts have not been allowed to issue security orders. Section 498A does not expand the defense area to dependent, non-matrimonial, women’s family members. Only physical abuse, and that also only when combined with a dowry, has been considered domestic violence. No legislation permitted the granting of reliefs or return to a marital home or domestic security.

1. **Salient features of the Act are as follows:**

It 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, a relationship in the nature of marriage, or adoption. In addition, relationships 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 the protection under the proposed legislation. However, whereas the Act enables the wife or the female living in a relationship in the nature of marriage to file a complaint 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.

2. It defines "domestic violence" to include actual abuse or the threat of 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.
3. It confers on the aggrieved woman the right to reside in a shared household, whether or not she has any title or rights in the same. In fact, a respondent, not being a female, can be directed under the Act to remove himself from the shared household or to secure for the aggrieved woman the same level of alternate accommodation as enjoyed by her in the shared household or to pay rent for the same.
4. The orders for relief the aggrieved woman is entitled to under the Act include protection orders, residence orders, monetary relief, custody orders and compensation orders;
5. It empowers the Magistrate to pass protection order in favour of the abused to 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 or others who provide her assistance against the domestic violence;

6. It provides for appointment of Protection Officers and recognizes and involves nongovernmental organizations as service providers for providing assistance to the abused with respect to her medical examination, obtaining legal aid, safe shelter.

Benefits of Protection of Women from Domestic Violence Act:

This legislation was adopted after the Convention on the Elimination of all Forms of Discrimination against Women. The concept of "domestic relationship" is sufficiently broad to include all sorts of home agreements, for example, when couples are not married. It was a pioneering step to include this, as well as relations that are categorized as fraudulent or bigoted.

In the case of, Bharata Matha & Ors v. R. Vijaya Renganathan & Ors, it was decided that the right to property (property owned by parents, but not ancestors) would be given to a child born from a living relationship. In other words, a woman and her child cannot be threatened by economic exploitation in a living relationship. Obviously, while the property and the Hindu marriage law have greater significance, it is gratifying that children who have formed ties not related to marriage also have rights of property. The respondent has an obligation of not wasting financial capital, to pay the victim's compensation and to safeguard the victim not merely against abuse but also his interests. If the claimant has legal rights/ownership in his or her family, the concept of 'shared household' states that if she inhabited the house with the respondent and he has been violent with her, then the respondents are responsible in compliance with the Statute. This ensures that the respondent cannot evict her, even though



she is not legally or financially active in the house. The security orders are used in most situations in which the victim may probably have been taken advantage of by the respondent. Finally, the orders issued under the law must be granted to the victim as evidence-free of charge.

Who can seek help or can claim reliefs under the Domestic Violence Act? According to the provisions of this Act, any aggrieved woman who is in a domestic relationship with the respondent and who alleges to have been subjected to the act of domestic violence by the respondent can seek help. A woman can file a complaint against any adult male perpetrator who commits an act of violence. She can also file a complaint against any male or female relatives of the husband/ male partner (for example in a live-in relationship) who has perpetrated violence. The Supreme Court in *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165 struck down adult male from the definition of “respondent” stating that it is not based on any intelligible differentia having rational nexus with object sought to be achieved. The Supreme Court also explained in the said case that the categories of persons against whom remedies under the DV Act are available include women and non-adults. Expression “respondent” in Section 2(q) or persons who can be treated as perpetrators of violence against women/against whom remedies under the DV Act are actionable cannot be restricted to expression “adult male person” in Section 2(q). Thus, remedies under the DV Act are available even against a female member and also against non-adults.

3. Important Legislations and Provisions of The Domestic Violence Act:

The DV Act, in a bold break from prior legislations, gives a very expansive definition to the term domestic violence, a term hitherto not even used in legal parlance. Domestic violence

is defined in a comprehensive way in S.3 of the Act, comprising physical, mental, verbal, emotional, sexual and economic abuse, harassment for dowry, acts of threatening to abuse the victim or any other person related to her.

An important addition to the law ensures that an aggrieved wife, who takes recourse to the law, cannot be harassed for doing so. Thus, if a husband is accused of any of the above forms of violence, he cannot during the pending disposal of the case prohibit/restrict the wife's continued access to resources/ facilities to which she is entitled by virtue of the domestic relationship, including access to the shared household. In short, a husband cannot take away her jewellery or money, or throw her out of the house while they are having a dispute. A woman who is the victim of 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.

This piece of legislation, in my view has been long over due. It is a comprehensive law and addresses all issues related to women. It is for the first time that an act has been made to address women's issues in such detail. The Act is an extremely progressive one not only because it recognizes women who are in a live in relationship but also extends protection to other women in the household, including sisters and mothers thus the Act includes relations of consanguinity, marriage, or through relationships in the nature of marriage, adoption, or joint family thus, 'domestic relationships' are not restricted to the marital context alone. In fact the Act has given a new dimension to the word abuse because unlike the primitive notion abuse includes actual abuse or threat of abuse, whether physical, sexual, verbal, economic and harassment by



way of dowry demands and thus, under the new law;

The law will cover those women who are or have been in a relationship where both parties have lived together in a shared household, and are related by marriage or adoption. Preventing one's wife from taking up a job or forcing her to leave job are also under the purview of the Act. One of the most important features of the Act is that it also provides a woman a right to reside in the matrimonial and shared household, whether or not she has any title in the household. Husbands or live-in partners who would be guilty of domestic violence can be put behind bars for a year and fined Rs 20,000 and all crimes in the Domestic Violence Act are non-bailable. In addition to physical violence of beating, slapping, hitting, kicking and pushing, the Act also covers sexual violence like forced intercourse, forcing his wife or mate to look at pornography or any other obscene pictures or material and child sexual abuse. The new law also addresses sexual abuse of children and forcing girls to marry against their wishes. This certainly proves that the new Act has been formed keeping the current relationship culture in India and the irregularities in the previous Domestic Violence Laws in mind.

The Act has also defined Physical Violence very comprehensively, as: Any kind of bodily harm or injury, A threat of bodily harm, Beating, slapping and hitting. Thus, physical violence is defined as any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health, or an act that impairs the health or development of the person aggrieved, or that includes assault, criminal intimidation and criminal force. But violence against women is not always physical. For the first time, the law has expanded the definition to include sexual, verbal and economic violence. Under the law, Sexual Violence will include: Forced sexual

encounter, Forcing a woman to look at pornography or any obscene pictures, Any act of sexual nature to abuse, humiliate or degrade a woman's integrity.

The new law is also tough on men who subject women to name calling or verbal abuse. While Verbal Violence is often trivialized as unimportant, observers say it can damage a woman's self-esteem. The Act defines Verbal Violence as: Name calling, Any kind of accusation on a woman's character or conduct, Insults for not bringing dowry, Preventing a woman from marrying a person of her choice, Any form of threat or insults for not producing a male child.

4. The Detrimental Effects of the COVID-19 Pandemic on Domestic Violence Against Women

COVID-19 is posing challenges larger challenges in terms of human rights including health rights of women and children. Since the mandatory lockdown has been imposed, violence against women is exponentially rising world over. Several countries have enacted special policies, laws and programs to deal with violence against women in homes.

However, India which since the 90s has witnessed widening inequalities since the policy of Liberalization, Globalization and Privatization has been introduced, right now is again facing the disastrous impact due to coronavirus. The pandemic is making adverse gender impact in two ways – 1) Middle- or upper-class women facing abuse in homes during the lockdown and 2) Poor women who have no homes or are surviving in slums or those on the roads walking back home or those awaiting in villages for migrant men to come back.

The National Commission for Women has reported a rise of 94 percent in complaint cases where women have been abused in their homes during lockdown. Also, another aspect that has

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not received attention is increasing number of cases where migrant women, along with men, are walking hundreds of miles, some in their advanced stage of pregnancy along with their children, without food. Some are being forced to deliver babies on the roadside while others are receiving devastating news of migrant men being dead while walking on roads. Deprivation and denial of health and other services to women and children during the COVID crisis is aggravating the disaster.

Therefore, almost half a billion women are at risk in India due to the pandemic. Yet, the state has not made any comprehensive COVID response plan to tackle these challenges. Neither any formal statement is being issued to declare domestic violence as an essential service nor plans have been made to support pregnant women workers walking hundreds of miles without food and water with their children. Rather, the state after 40 days of lockdown, while easing down the restrictions, opened the liquor shops as a first step. In doing so, earning revenue is prioritized over genuine serious concerns of women. This is despite of the fact that the women's movement has shown evidences that consumption of liquor by men is proportional to increase in incidences of abuse.

This essay investigates the gaps in the state's response in India to the increase in incidents of violence during the lockdown and argues that a robust comprehensive plan is required to address different aspects of violence women are facing in the largest democracy. The government cannot miss the chance to protect women from violence. In order to imagine a gender just violence free world, the need is to impose the lockdown on the collective imagination that reiterate gender stereotypical notions and to put the viruses of patriarchy and poverty in quarantine and isolation forever. By maintaining social distancing with the

misogynist ideas and developing a plan to eliminate inequalities in all forms, gender justice and human rights could be achieved, and the rights guaranteed under the Article 14, 15 and 21 of the Constitution can be reclaimed.

5. Failure of the Act at Certain Points -

The Act could play a stellar role in protection of women's rights in the household and in guarding them from domestic violence. In the very first instance, a recognition of domestic violence as something unacceptable, where it has become yet another social practice, is necessary and indeed, commendable in a patriarchal society. Having recognised the rights of women and the violation of these rights, the next step taken is providing innovative and efficacious remedies to enforce the same. The conceptualization of the Act thus far is admirable.

However, one thing that the writers feel is amiss in the Act is the fact that it brushes aside male children. Though there are interpretations to the contrary, it is the opinion of the writers that the Act does not extend its protection to male children. Firstly, an aggrieved person as defined by the Act, is a woman who is, or has been in a domestic relationship with the respondent. While the Act does define a child as any person below the age of eighteen years, the definition of domestic violence itself refers at all stages only to an aggrieved person and not to a child; the only relevant place in which a child is mentioned is S.18(c), where it is stated that a Magistrate may pass a protection order restraining the respondent from entering the school of the child where the aggrieved person is a child. It is the opinion of the writers that this in itself is not sufficient to construe the Act as applicable to male children as well.

Arguably, it could be said that the Act was passed to cater to the needs of women and not boys. After all, the very title of the Act indicates that it has been enacted to protect the rights of



women. Yet, it must be kept in mind that domestic violence, though predominantly faced by women, be they wives, mothers, sisters or daughters, is also aimed against male children at times. It seems a poor excuse to say that male children should not be provided easily accessible relief from domestic violence simply because of their gender. Even if other forms of violence could be adequately addressed by the IPC (though this hardly seems the case), it is a fact that the sexual abuse of male children cannot be redressed in any apposite manner by it. Reference may be had to the Sakshi case, and the subsequent 172nd Law Commission report, where it was argued, among other things, that the offence of rape as addressed in the IPC be defined in gender-neutral terms, so that the protection could be extended to male children as well. This was necessary keeping in mind the increased and increasing instances of sexual abuse of children, male and female. Once it is acceded that male children are affected as much by sexual abuse by female children, it must be accepted that they need to be protected from such abuse within the “private” sphere too. On the face of it, there seems to be no concrete reason for denying male children protection from domestic violence.

6. Conclusion –

The Act, by and large, is a valuable piece of legislation. Its shortcomings do not, on final analysis, blot out the immense benefit the Act could be of to women. A good thing about the Act is the fact that it deals with domestic violence regardless of the religion of the parties, as many a time wrongs are perpetrated (ab)using the protection afforded by personal laws. It is thus secular in outlook in protecting women’s rights. It also does take up for consideration child sexual abuse, though in a limited sense (male children being excluded from its purview), at a time when the practice

has become rampant. The authors further consider it desirable to extend the Act and allow its application to male children who are also affected by domestic violence, considering the nature of the practice, and recommend such an extension. While saying that the Act is protected by Article 15(3) from being considered discriminatory, it would help to recollect that this provision creates an exception in favor of women and children, and thus could be made use of to justify the extension of the Act to male children as well. Indeed, it would seem logical to do so.

It is, however, opined that it is too early to predict the usefulness of this legislations to its target beneficiaries and the society as a whole. It needs to be seen whether the practicality of the Act has been ensured by the legislature and also the responsibility of implementation lies in the hands of the executive which will be the actual scale for measuring the effectiveness of this Act.

