

INTERPRETATION OF THE DOMESTIC VIOLENCE ACT 2005

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“To protect women in times of war, we must first make sure women receives equal rights in times of peace”

INTRODUCTION

Violence against women are generally violation of fundamental freedoms and rights such as right to freedom, life and liberty, right to equality as mentioned in international charters and conventions. Violence against women can take many forms which can be public, physical, mental as well as domestic. This fear of violence restricts many women from participating more actively in public life and therefore denying them their right to equal status. Domestic Violence is a violence post-marriage where the other partner resorts to violent behaviour. Domestic violence can take place in any form of marriage as it can be in heterosexual, same-sex marriage or even with the child of a married couple. Domestic violence has a long history dating back to the 16th century where it is recorded in the English common law that it is treated as a crime against the whole community rather than against the particular individual who is victim of domestic violence as it is a breach of peace. In domestic violence the most common sort of violence is beating the partner. However, domestic violence can range from molestation to acid spilling on the face, as a result it can affect the victim's mental health which may even lead the victim's death in worst cases. According to various surveys conducted, women are the most vulnerable and the regular victims of domestic violence. Although, most of the times domestic violence goes unreported, many countries passed laws to stop and keep a check on it. Amongst those countries, India is one who also enacted a law against domestic violence in the year 2005 which goes by the name “The Protection of Women from Domestic Violence Act 2005”. This

act starts with the definition of domestic violence, then it states the ambit of domestic violence and goes to lay down rules for the police officers, magistrates and the medical staffs and also their respective duties.

CHAPTER I AND II OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT

“The Protection of Women from Domestic Violence Act” was enacted by keeping in view the rights guaranteed by article 14, 15 and 21 under Part III of the constitution. Under such rights, a person residing in India is guaranteed equality before law irrespective of gender and personal liberty except according to procedure established by law. The law was enacted to stop and protect the women from being victims of domestic violence. Section 3 of the Act defines domestic violence to be a harm on mental health through verbal abuse or physical assault on the victim to coerce her or any person related to meet any unlawful demand for any dowry or other valuable property. The above section divides domestic violence into 4 types that is--- (i) **Physical abuse:-** Domestic violence committed will fall under this category if the aggrieved is assaulted physically, or when it affects her mental health or if she is harmed through sheer force and criminal intimidation.

(ii) **Sexual abuse:-** If the act of domestic violence involves the victim being sexually forced into or molested which may bring down or degrade her dignity.

(iii) **Verbal and emotional abuse:-** Acts such as insults, verbal humiliation, calling ridiculous names specially if the aggrieved is unable to bear a child, falls under the ambit of verbal and emotional abuse.

(iv) **Economic abuse:-** When the aggrieved is denied access to the natural resources or to the resources to which she is legally entitled by virtue of being the respondent's wife or a dear relative, it falls under the ambit of economic abuse.

CHAPTER III AND IV OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 AND THE CASE OF SATISH CHANFER AHUJA V. SHEHA AHUJA AND OTHER LANDMARK CASES

Under Chapter III of the said act that is section 4 to 11, the police, protection officer, service provider or magistrate are duty bound to protect and aid the aggrieved party. It empowers any person to report the nearest police station regarding the incident of domestic violence. It also lays down the rule that once the protection officer or the magistrate gets the knowledge that the crime has been committed, they have an immediate duty to inform the aggrieved party of their rights and the availability of free legal service under the Legal Service Authority Act 1987. It also prescribes duties for the shelter homes to accommodate the aggrieved party if the need so arises and medical staffs to assist the aggrieved in need of any medical treatment. The act in section 8, 9 and 10 goes on to state the appointment procedure and the duties of protection officers. It clearly lays down that the protection officer as far as possible should be a woman and that it should assist the magistrate in carrying out orders as stated in the Act. The Protection officer may also be duty bound to arrange for the aggrieved party shelter home, legal aid if required, and to ensure that the order for monetary relief under section 20 is complied with and executed in accordance with the Procedure prescribed in CrPc 1973. It also lays down the duty of service provider to record the incidences of domestic violence, ensure the aggrieved has received shelter and counselling, to be reported to the magistrate. Under section 11 of the Act, it lays rules to be followed by the governor such as promoting mass awareness campaigns, periodic training of the judicial officers and the people who are involved directly in curbing down domestic violence.

Chapter IV of the act which is from section 12 to 29 laid down rules for an application to the magistrate, transparency of the legal proceedings, counselling, the right of the aggrieved to reside in shared household, protection orders, monetary reliefs, Jurisdiction etc. Section 27 of the D.V. Act talks about the competent court and states that only a first-class magistrate or metropolitan court would be competent to grant a protection order and other orders and try offences within the local limits of:-

- (i) The person aggrieved temporarily resides or carry on business or is employed or

- (ii) The respondent resides or carries on business or is employed
- (iii) The cause of action has arisen

Furthermore section 18 of the D.V Act provides for the various remedies under the D.V. Act for the aggrieved person where the magistrate being satisfied that a domestic violence has taken place or is going to take place may pass a protection order and thus prohibit the respondent from: (i) committing any domestic violence act(ii) aiding or abetting in the commission of acts of domestic violence (iii) entering the place of employment of the aggrieved person or if the person aggrieved is a child then any place whether school or other frequented by the aggrieved person (iv) communicating in any form with the aggrieved person (v) alienating assets held jointly by the respondent or aggrieved party or singly by the respondent without the leave of the Magistrate(vi) causing violence to the dependents or any other person who gives the aggrieved person assistance from domestic violence.(vii) committing any other act as specified in the protection order.

On a supreme court case, the fact goes, the appellant by a deed purchased a house in 1983. The son of the appellant was married to the respondent after which they started living on the first floor of the house. But after some years, differences arose and they started living separately in the same house. The son of the appellant filed for divorce in 2014 which is still pending, following which the respondent filed an application under the D.V. Act 2005 alleging severe emotional and mental abuse where the magistrate ordered the appellants under section 19 of D.V Act which allows the magistrate to file a restraining order, not to dispossess the respondents from the property. The SC held that any pendency of proceedings under D.V. Act 2005 or any order passed under section 19 of the Act which is regarding the right of residence of the aggrieved party cannot be considered as a total blanket provision as to not initiate or continue any civil proceedings relating to the subject matter of such interim or final order passed under the Act.

An interesting case can be seen in the SC by the name Indra Sharma v. V.K. V. Sharma where the facts were that the appellant maintained live-in relationship with the respondent, who was a married man. and started living together in a shared household. The appellant here filed an application under section 12 of the D.V Act before the magistrate which allows an aggrieved person to seek any relief under the act. The SC held that all live-in relationships are not in the nature of marriage as in the following case the respondent entered into relationship while fully

knowing that the respondent was a married man, committing an intentional tort. The following case therefore would not fall under the definition of domestic relationship as provided by section 2(f) of the Act. Hence, any act or omission under that relationship will not fall under the definition of domestic violence provided by section 3 of the Act. So, the compensation or maintenance plea demanded by the appellant cannot be sustained.

Again, in the case of *Sou. Sandhya v. Manoj Wankhade*, the SC decided the important question of whether a women can be held liable under the provisions of the D.V. Act. Th facts in this case were that the appellant was married to the respondent no.1. After which she began to reside with her husband and the respondent's widowed mother and sister-in-law were also residing (respondent no.2 &3). According to the appellant after one year she was assaulted by her husband and the other respondents. Following which the appellant filed a complaint under section 23 of the D.V. Act before the Judicial magistrate, First class. The respondent no.2 & 3 in turn filed a criminal appeal challenging the magistrate's order under section 29 of the act on the ground that being women they cannot be made respondents of a case under D.V. Act. The SC here held thatalthough the expression women is not included in section 2(q)(defines respondent under the act) but while providing that a complaint can also be filed against a relative no restrictive meaning has been given to the expression relative nor has it been specifically defined in the act. Hence, it can be clearly seen that the legislature never intended to exclude female from liability.

SOME LIMITATIONS IN THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005

The Domestic Violence Act also suffers from some serious limitations. The most significant limitation is the civil character of the act. Since it is a civil statute, it does not provide for punishment of men engaged in domestic violence. Moreover, the Act does not provide for any permanent relief of the victim. What it provides is just an interim solution for the women by providing them with protection officers and others for a period of time for evaluating their options. The act provides the right of women to reside in a shared household but it does not provide against violence in the household. Since the orders prohibiting the perpetrator from inflicting any injury or harm is temporary, therefore generally it does not provide protection of

women for domestic violence in the long run. Though the act contains the potential to protect women from acts of violence, there are serious impediments such as lack of awareness and information regarding the act, lack of training by the police and judges on that respect and chances of corruption. Section 11 clearly states the need of the government to publicize the provisions of the act, how much is done in the ground level is quite doubtful where women advocacy groups in Delhi constantly cite lack of awareness in that matter. Another point to be considered is to be that domestic violence in its worst forms prevail in the poorer household and illiterate mass, hence initial publicity of the act remains limited among the literate and affluent sections of the society. Community level campaigns are missing to spread awareness among geographically and socially isolated sections.

CONCLUSION

“Domestic Violence” is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. Presently, when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under Section 498A IPC. The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act. Still a lot of work needs to be done on that field as the act will not have any effect until the patriarchal mindset of the society is not changed. On that note women should be empowered to recognize their rights and special training is required for sensitization and cooperation of the police forces, protection officers, service providers and magistrates while enforcing the Act. The NGOs and government should take additional steps for effecting the Act such as providing publicity and education regarding law, increasing the number of attorneys to provide legal representation to the victims, increasing the number of shelters, monitoring and amending the act as needed while also interpreting the act in consonance with international treaties. The act no doubt being a great achievement for the government and the country, the government should constantly see to the enforcement of the act and rise it newer levels of achievement every now and then.

REFERENCES

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