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**THE DAWNING PRIDE: CONTRA VIOLENTIAM
(ANALYSIS OF “THE PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT, 2005”)***

ABSTRACT

Domestic violence in its literal meaning avows abusive behaviour with a person at home which is mostly contradicted to be the spouse or the wives. The article draws light upon the actual conditions of the act and its proper functioning. The act when came into existence, was with an intention to serve as a weapon towards a progressive society in the country. Its main motive was to safeguard the victims of domestic violence but increase in the loopholes of the act and prejudiced thinking of the law-makers about the society, gradually enriched the limitations of the same. The article embraces various case studies which assisted judiciary and case laws that have broadened the scope of the most misused act in the country, Statics which prove that the time is to bring the change. The article studies the practical application & misuse of the act and how has it been affected by the patriarchal nature of the Indian society or how Domestic Violence is perceived in India. Cruelty can be economically, sexually, mentally, physically or socially but the level of cruelty and abuse may differ from person to person depending on their background. The article dictates that victim must not be considered to be a gender and assuming it to be the deprived one, the fight is for equal laws irrespective of their gender. The act focus is to provide protection to the victim, who can be a son, a daughter, a father or a husband rather than punishing the accused. The need is to provide relief and grants. The act provides for appointment of Protection Officers & Service Providers. Their functioning is on what the decisions depends upon. The article deals with how the most fundamental unit of society i.e. family gets affected or disrupted by the egocentric nature of one party. The need to bring change, shapes the basis of the mentioned suggestions in the Article.

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INTRODUCTION

“I am living in hell from one day to the next. But there is nothing I can do to escape. I don't know where I would go if I did. I feel utterly powerless I am punched, kicked, slammed but yet not broken. I am abused, I am trapped in this prison, It feels bad here worst to stay quiet, I loved him, Admired him, But he is wrecking me slowly everyday every time, I am frightened, I want to boom out of here and shout, shout out loud and tell everyone I am not a property and lead my life on my own rules, I and only I can change my destiny.”

Who was I? One day my 7-year old boy asked me, which left me into deep thought that who actually I am A daughter, a sister, a wife, a daughter-in-law, a mother or a property, a material, an object who is not allowed to think, live, speak, feel or even breathe or have an identity. This is how one must have felt when his/her basic dignity is beaten away. Can be men or women, but mostly what in the circle comes is the women.

When we think of domestic violence what comes to our mind on the first hand is the women who is betrayed by her spouse or his family members but what in point of fact the betray is not limited to a married woman, it may also consider any women facing violence at her shared household, the doer can be her father, her brother, her mother, sister. As we live in a patriarchal society where men have an image to maintain, a machoism to sustain. A man who cannot cry, a man who cannot be soft-hearted a man who always needs to be bold enough. It is pre-assumed that a man will always take care of the family financially as well as emotionally and fulfil all standards of making a flawless household. Who decides these standards, which should be the one amongst them primarily fulfilled and what may they include? If we talk on what domestic violence results into not only for the bearer of it but others surrounding her/him the consequences lead to:

- Mental trauma: constant murmuring, cursing and shouting may lead to depression and mental stress which would affect the all over health of the bearer.
- Long term effects on career of the children: A great decrease in confidence of child or women which stops their all over growth and handicaps them not only monetarily but mentally also. The rate of recurrence in the discrimination amongst the gender acting as violence is the main reason that deprive them from getting what they deserve in the field of basic rights like education and right to life and other basic human rights.

- Withholding the sex: According to the sociologist “Marriage is a legally recognized social contract traditionally based on sexual relationship and implying a permanence of the union.” When we talk about sex which is a very private topic and people believe it to be a taboo in a society like that of India but if we consider, this is the most important aspect of a marriage which doesn’t only serve the woman as a practical need but also for men more than pleasure, this can be considered as a need. It is seen by psychologist that withholding sex for men and women can cause them mental trauma and dissatisfaction from themselves.

The first question that arises in our mind is what brings violence in our society? It is the prevalent discrimination for the particular gender, which one can see from their childhood and initially develops it into himself. Out of total crime against women it was observed in 2015 that there were about 34.6% of cases consisting cruelty by husband or relatives¹. In a country like India where the society still lives in the taboo of anything to everything what can make a woman to come up and say out loud about what she is facing, feeling. Who can hear the truth? Why are we so tolerant? Our society needs to be redefined, the rules are meant to be changed.

When it comes to women More than 50% of women have been a prey to domestic violence which means out of every two women one has been beaten or abused mentally, physically or sexually. Eighty-five per cent of every married women have experienced violence. Out of which 2 % mentioned in this study was that mother-in-law was a perpetrator, though a father-in-law was violent in 0.6%of the cases and other in-laws were violent in 1.5% cases. This drives us to the question that -What actually “Domestic Violence” is?

Domestic violence is defined under Section 3 of the Act as -:

“Any act, omission or commission or conduct of the respondent shall constitute domestic violence in case 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 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 has the effect of threatening the aggrieved person

¹ Ministry of Home Affairs, Government of India, Statistics, National Crime Records Bureau, 'Crime In India 2016' <<http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20%202016%20Complete%20PDF%20291117.pdf>>accessed 10 January 2019

or any person related to her by any conduct mentioned in clause (a) or clause (b); or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.”² The Act goes on, through the section Explanation 1, to define "physical abuse", "sexual abuse", "verbal and emotional abuse" and "economic abuse."

It is considered that domestic violence is mostly seen in the lower strata of the society but actually it can be easily seen in all sections of the society. When asked from people about why they do such acts their answers were astonishing:

- They thought that it is their right to do so and moreover a duty.
- It acted like a medicine for them to release their frustrations of the day.
- They believe their wife deserves this kind of behaviour (reasons to this were small mistakes by the wife, like not making good food, not ironing shirt on time and many more.)
- They were the male heads.

This not only affects the couple and the sanctity of marriage as an institution, but also disturbs the family, effects the kids causing a mental instability for both the victim and the family members.

SCOPE OF THE ACT

The provisions of this act, prima facie, appear to be perfect, but unfortunately all that glitters is not gold. Hardly any awareness to the people, lack of confidence in the judicial system & barely any knowledge is the reason behind the futility of the act.

This act was made with the motive to protect the women & hence there is no question of involving men as victim. Thereby, this act can't be made gender neutral.

Section 1 of the DV Act talks about the title i.e. Protection of women from domestic violence. The objective of this act begins as “An act to provide more effective protection of rights of women...” In some cases, domestic violence has also occurred to children, old parents or even to a husband by the wife but such instances are not deemed to be under the domain of this Act. The means of causing this violence is different and astonishing at the same time the reason behind these are as questioning from

² Protection of women from Domestic Violence Act 2005, s 3

the sole concept of psychology to the vaguest ones the deviant behaviour is the one which rises up the question. Therefore, it's important to know the main causes of violence and the means used for it. E.g. A father may hammer his child to torture the wife- in such cases the need of protection is for both the child and the women but the basic intention behind the enactment of this act was not providing gender neutrality but to raise the level of the gender which alas is deprived in a country like India. In the definition of "aggrieved person" in Section 2 of the Act, it is clearly mentioned that the aggrieved person can only be a woman who has been in a domestic relation with the respondent. The act is one of the best pieces of legislation which broadly deals with women and not only married women as accomplished by the Section 498-A of IPC priorly, there were no laws for protection of other women such as daughter, sister. If other sections of society are also included, it will be a general legislature & not a specific act for the grave problem seeing the social culture & patriarchal nature of the society where women are usually victims of domestic violence.

Earlier, in the Act (at the time of its incorporation), only an adult male could be the "respondent" under Section 2(q) of the act. Now the phrase "adult male" has been removed from the definition of respondent in the case of *HIRAL P. HARSORA VS KUSUM NAROTTAMDAS HARSORA AND ORS.*³ Now, any person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought to demand any relief under this Act can be a respondent, irrespective of their gender.

Section 32(2) of the Act states "Upon the sole testimony of the aggrieved person, the court may conclude that an offence under Clause (1) of Section 31 has been committed by the accused"⁴. This section describes how powerful the law is. It is implementation & infrastructure which makes it weak.

This is dealt with for the first time that the officers provided, the protection officers can also be punished for their malfunctioning which can be considered as one of the greatest steps to ensure its proper functioning. It has been always argued that there is very less conviction rate in such cases and most cases result in divorces or separations but what needs to be noted that each case has various levels which can be seen in such cases enclosing a number of reasons behind such as withdrawing of complaint, settlement at an earlier stage which can not be depicted as the misuse of the Act it should be always

³ *HIRAL P. HARSORA VS KUSUM NAROTTAMDAS HARSORA AND ORS* (2016) 10 SCC 165

⁴ Protection of women from Domestic violence Act 2005, s 32(2)

remembered that the act has a remedial nature and the main concern is to promote women to come out and stand for themselves against the injustice and hence, establishing equality.

LIMITATIONS:

1. Aftermath of the complaint and case proceedings: Though the Act provides for the rights of the aggrieved person to reside in the shared household under Section-17 yet the sense of living is lost & there is a constant threat of mental harassment in the mind of the complainant. Even when a woman crosses all the boundaries and makes a complaint which in itself is a big step for her and at the same time difficult as most women in India are not self-dependent, she can easily be manipulated by her family members and the society which initially feels that having a male member as head of family is important. Being a part of that particular family and thinking about the reputation, her children, husband or other family members, she withdraws the complaint and the story of Domestic Violence upon her keeps continuing. Her voice is buried beneath everyone's false pride.

2. Ill-effect upon children: A child who witnesses domestic violence either being a part of it or a victim in any form, undergoes mental trauma. The child sinks into a state of fear and depression which he carries lifetime with him. The magistrate can grant temporary custody of the child/children to the aggrieved woman as provided under Sec-21 of the Act. It is a temporary solution which has its adverse effects on the mind-set of the child/children in short as well as long run.

3. Lack of Protection Officers: Section 8 of Domestic Violence Act provides for the appointment of Protection Officers (PO's) by the state government. But in reality, the number of Protection Officers appointed is generally inadequate. In most cases, a government officer e.g. a police officer performs the duties which are meant to be done by the Protection Officers. This increases the burden on the Officer & the Officer can't do his work with full dedication & concentration which makes the implementation ineffective to some extent. A lot of red-tapism is also involved in the mechanism. (Though protection officers can also be evicted.)

4. Absence of recognition and awareness: It is supposed that major incidents of domestic violence occur in the lower strata/sections of the society. And it is observed that the women from such families are usually uneducated & unaware about the existence of such Act. Even if they know about it, they associate it only to physical violence. Other forms of violence as sexual abuse, economic abuse, verbal

& emotional abuse are often ignored by them. In many cases, women are used to violence. They feel that they don't have any remedy for such violence & these kinds of violence are a part of day to day routine. The pendency rate of the cases relating to domestic violence was as high as 25% in 2016 as per NCRB data and it seems that those women are still suffering.⁵ Moreover, this patriarchal concept is engrained in the minds of women to such depths that they start blaming themselves for the situation & feeling that they might have done something wrong & that's why they are facing this oppression or that they deserve exploitation as they consider themselves inferior to men.

5. Dilemma between family and rights: In some households, women are not allowed to go out of their house alone, any male member accompanies them whenever they go out/ wherever they go. They don't even have access to any means of communication. In such cases, it becomes quite difficult to reach out to the victims. The victims too, find it very difficult to approach the authorities or even speak about such things openly.

The women, naturally, are of very soft heart & nature. They think about their family first even when they are facing cruelty while living with them. Reputation of their family is at stake while going to the Police Station and hence they fear to complain. They may only come out when the situation is grave. According to NCRB report on Crime in India 2016 there were only 437 cases reported under the Act. Out of which if fragmented state-wise Bihar had 161, Kerala with 132 Cases, Madhya Pradesh 91, Himachal Pradesh 15, Rajasthan 14 cases and followed by 11 cases from Haryana. These six states accounted for the 92 percent of the total cases reported.⁶ Court cases or police is always considered as a havoc in the society not an institution to serve and aid.

A woman in most cases is dependent upon men for various social, economic, emotional etc. needs. While she is facing domestic violence, she thinks that she is still having a kind of stability in her life as to the food she is getting, her children she is living for with and security of future. But, if she gets out of the way and makes a complaint, she loses all of that security (social as well as economic) because in

⁵ Ministry of Home Affairs, Government of India, Statistics, National Crime Records Bureau, 'Crime In India 2016' <<http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20%202016%20Complete%20PDF%20291117.pdf>>accessed 10 January 2019

⁶ Ministry of Home Affairs, Government of India, Statistics, National Crime Records Bureau, 'Crime In India 2016' <<http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/NEWPDFs/Crime%20in%20India%20%202016%20Complete%20PDF%20291117.pdf>>accessed 10 January 2019

most cases the women are not educated enough to build up their own career. This is the prime reason for not stepping out of the house and approaching the authorities.

The objective of the Act is to provide protection to the woman and not break the sanctity of marriage at the same time. But mostly both the objectives are in conflict. Either the women will get justice or her marriage will remain sacred. It is evident that in most cases the outcome is divorce. The fear that her husband might give her a divorce if she complains, restricts her and thus she is uncomfortable in confronting the perpetrators. Reputation is hurt of the accused can have adverse effects & can even lead to breakdown of marriage (in cases of conjugal relations). Mental health of women deteriorates & they don't get justice in these cases. Mental pressure in minds of women increases which sometimes even leads to suicide. Matrimony from a bond of love changes into a milestone of one's neck.

6.Misuse of the Act: Sometimes, false allegations are made by women, giving a reason to doubt for other genuine cases too and creating a wrong perception for the society. In some cases, personal grudges lead to complaint under this act. Wolf cries by women have led to a disbelief among the society which results in mistreatment of genuine cases too.

7.Lack of infrastructure: Lack of Protection officers & service providers make the implementation weak. Shelter homes are also inadequate in number & that too of very poor quality. Some districts don't even have a single shelter home. Stay of women is for limited time. Dignity of the women is not taken care of in shelter homes.

8.Misconception: The basic concept of the act that is it includes other types of violence also like mental, economical which is not known to much women in our country. Most women do not even constitute it as a type of violence. Also, there is a misconception that the act is only for married women which in fact is totally mistaken and it is the very reason that makes it different from other laws.

SUGGESTIONS

1) **Addressing the issue properly:** DV, instead of being gender centric should rather be issue centric. Domestic violence is not always limited to Women but also can be inflicted upon Men, children and older generation. The victims, being women, should be given sufficient space and comfort while interacting with the PO's, police officers or any such authority. There should be an endeavour to make them feel secure and comfortable.

2.) **Increasing awareness:** Awareness should be spread about the act & its provisions so that all victims come out and raise their voice against the violence & harassment they are facing. This could be done by organising orientation & training programmes. Stories, dramas, plays & other forms of visual representation can also be used for sensitizing & supporting women and making them aware. Media at the same time plays a very influential role on the minds of people what they see, they learn the need is to show women in a non-discriminatory way through movies and advertisements. Interference of lawyers should be minimal inside the court as they mould the cases to their own advantage and women should be made aware of the knowledge of law so that real voice of the victim comes out. Legal provisions of the act must be communicated to the concerned parties. Role models can also influence people to a huge extent. Women who have been saved through this act should be made brand ambassadors of programmes or organisations so as to increase a sense of confidence and faith amongst the people.

3.) **Augmenting volunteering:** Volunteers should be encouraged to create awareness & sensitize people. They should be given some incentives for the social work done by them. NGOs such as Azad Foundation, Angala should be promoted & assistance should be provided to them, whenever required. The no. Of women's rights organisations such as Swayam in Kolkata, Angala in Bengaluru should be augmented. Programmes/Initiatives like Naari Adalat, Bell Bajao campaign should be promoted.

4.) **Making the new generation aware:** Education & awareness about Domestic Violence act & other rights of women must be spread from the school level itself. It will help in reducing or curbing the problem at initial stages only. This could be done through organising trainings camps, including DV Act in textbooks etc. Institutionalisation of DV act should be done (adding DV act in the curriculum of students). Mind-set of a male child should be shaped in such a way that he perceives himself equal to a girl from the very childhood. Media's approach towards DV should be changed. It should be directed from what is there to what should be done as well as preventive measures that can be taken by the victims.

5.) **Adoption of Non-conventional ways to solve the problem:** Provisions can be made for non-conventional methods such as mediation, negotiation, counselling etc. to reach to an amicable solution. Counselling centres & well-trained counsellors should be available at initial stage. Counselling should be done in such a way so as to restore the self-esteem of the victim. Counselling of accused must also be done. Negotiation can be of great help in matters of family conflicts. If the victim brings the case to

the court, she'll either win or lose. In either situation, her problems are not fully resolved. If she wins the case, she will face problems such as emotional instability, societal pressure etc. And if she loses the case, she'll have to live as she did earlier or may be worse conditions which is obviously not good for her. So in that case, a win-win option should be aimed at instead of the present situation.

6.) Working towards independence of women: Self-dependence of women in all sections of society (especially in economic matters) should be increased so that they can earn a livelihood as well as secure their future. This could be done through various vocational courses for women. This way, they will not consider themselves inferior to males or as burden on others. Governmental programs should be promoted which provide employment to the women to make them self-dependent

7.) Implementation: The DV act has provided for many good provisions but their implementation should be made much stronger. Resources (Human & Financial) should be provided in an adequate quantity for the implementation of the Act. Separate Protection Officers (PO's) who are fully trained must be appointed in each area. PO's should be made available at least at block levels. A regular check should also be kept on the POs and the conditions of shelter homes should be taken care of. Proper infrastructure must be available for the proper implementation of the act Service providers must also be available at each level. Shelter homes such as Asha Jyoti Kendra must be available in each area. In present situation, some districts don't even have single shelter home. DIR forms should be easily available. Decision-making should be fast track. Proper check-up should be done by the authorities about the allegations & witnesses to prevent cases of false allegations & to understand the actual position of the case.

8.) Children must be included-- According to child right conventions also. But again, there is special act i.e. POCSO specially for children. So, we can make other law which specifically deals with domestic violence against children. If we add children in this act only, scope of this act will be over-widened & there will be implementation issues as there is already lack of infrastructure & enforcement. Refinement & enhancement needs to be done for provisions for girl child.

CONCLUSION

“A girl once asked her father, why do they stop me from studying? The father replied, because they think if once you will get educated you will literate yourself and will know how to live and lead your

life on your own rules, they are afraid that their uphold on you will be loosened, they are afraid that their superiority will come to an end, if they can't grow they will pull you down, stop you from growing. They will beseech you to not develop but you shall grow- like a big tree which can equally provide shadow for all.”

Education- the reason and the only quality which can bring a change in you, a change in opinions, views, the way one sees the world and even himself. Education is the only one that can empower you. Not only for women but it is necessary irrespective of gender, age, religion it must be accessible to all. Education not only means a study of philosophy, literature, science but also it should include the subjects like morality, dignity, respecting everyone (irrespective to religion, gender, caste or any other distinguishers). The schools should be the one which can change the mindsets of kids and eventually the upcoming society. Parents should also do this only if, their own thinking is this liberal. Self-awareness can act as the biggest medium of change and reformation but with the help of education only.

When we see cases of Domestic Violence, we can majorly see women as a victim of the same but what is the reason behind it. When a girl marries in a conservative society like one in India, she is told to be a “paraya dhan” which literally refers to the property of someone else, also they are considered to be a burden. In the first instance they can't convey their issues to their parents as they feel to be a part of nowhere. A woman is afraid to open up to her own parents as they also consider her to be a burden. She decides to let the situations be and survives all this quietly, which she finds easier than telling to her parents.

The example above may only concern a married woman but domestic violence doesn't include only them it includes women in general. We mostly consider domestic violence act as protection act for women but this may also hold importance for man and children sexual, mental, physical abuse. The concept of individualism and self-dignity must be taught and learnt from the starting. The concept of violence comes with the concept of superiority which may differ in terms of ranks relation or office.

The usage of the act is still only done by a certain sect of people who already are powerful and to protect themselves. More of a channel of revenge than in the hunt for protection is what the act does. The predication of thinking a man as a criminal, encourages these kinds of women to come up and file false cases. The women who are really aggrieved of the act, still dream of a peaceful and healthy life. the

reach of the act must increase to the grassroot level and easy accessibility must be ensured. The bond of matrimony and its inviolability needs to be redefined.



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