

LAW ON DOMESTIC VIOLENCE AGAINST WOMEN IN INDIA

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Abstract:

Passing of the Protection of Women from Domestic Violence Act, 2005 brought to the fore a new civil law on domestic violence, which provides immediate emergency remedies for women facing violence such as protection orders, non-molestation orders, the right to reside in the shared house hold, etc. This paper examines the background of passing of the enactment, and also try to understand why a co-ordinated approach including civil and criminal remedies is needed to address violence against women within the home.

I. Introduction

Domestic Violence is not a new phenomenon.¹ The legal recognition of domestic violence began with the passing of dowry prohibition Act, 1961.² Sadly, the enactment of the law did neither stop the demanding of dowry nor the giving of dowry.³ So certain changes were incorporated in the Act.⁴ But Changes did not bring much relief. More over demands for dowry in association with violence lead to death dowry in association with violence lead to death of women in the matrimonial homes. This was a crime without a name.⁵ The same was later named as "dowry death". And to address this problem, sections 498-A⁶ and 394B⁷ were introduced in the Indian Penal Code. And for presumptions as to dowry death Section 113B⁸ and presumption as to abetment of suicide by a married woman S.113A⁹ were inserted in the Indian Evidence Act, 1872.

II. Criminal Law on Domestic Violence

Criminalization of domestic violence in India was brought about in the early 1980s after a sustained campaign by feminist groups and women activists all over the country.¹⁰ Great impetus was imported to this movement, especially after the much criticized judgment of the Supreme Court in Mathura Rape Case.¹¹ The demand for the criminalization of dowry death and domestic violence was a culmination of all these struggles ending successfully in enactment of Section 498A in the IPC in 1983, Section 304B in 1986 and corresponding provisions in the Indian Evidence Act, 1872.¹² These criminal law reforms held great promise

at the time of their enactment. It sought for the first time to bring the issue of domestic violence of the realm of the family and into the public domain in India.¹³

Since Mathura¹⁴, the important campaign issue for feminist groups was dowry related harassment all violence faced by women within homes was attributed to dowry both by activists and by the state. This resulted in their articulating a demand for a law on domestic violence only for married women. The campaign of the women's groups turned out to be a narrow, short sighted and wrongly formulated programme as it placed dowry related violence on a special pedestal. So the law failed to address the problem of domestic violence in its entirety.¹⁵ Section 498A, IPC is ineffective for unmarried, widowed, separated or aged women who were subjected to cruelty by members of their natal family and a woman subjected to occasional beating not causing "grave" injury is not entitled to any protection from the state.¹⁶ For such violence perpetrated by other members of the victim's family. Remedy under criminal law is available only if such forms of violence fall into other general offences of the IPC such as Hurt¹⁷, Grievous hurt¹⁸, Rape¹⁹-, Outraging modesty²⁰, etc.

Women's real life experiences show that they face violence in the form of physical, mental, virtual, psychological, sexual and economic violence. Section 498A does not address these different forms of violence specifically, and addresses 'cruelty' very generally, as any act that is likely to drive the woman to commit suicide or to cause grave injury or danger to life, as mentioned earlier. As a result, it often is at the discretion of the Police Officer to assess whether the sexual abuse or verbal and psychological abuse faced by a woman from her husband or in laws would qualify as cruelty under Section 498A or not. Though both civil and criminal law address violence against women as 'cruelty' and considers the definition to be the same, the requirement of proof in civil and criminal law is very different. It becomes almost impossible to prove cruelty under Section 498A in most cases.²¹

Lastly, for effective implementation of Section 498A and other criminal law remedies in terms of providing protection to women victims of domestic violence, it is crucial that civil law remedies are in place as well.

III. Civil Law Remedies

The concept of harm or injury that is basic to the understanding of domestic violence is derived from the law of torts.²² Any person can bring a claim for tort action, irrespective of the relationship. Some of the torts that apply in the domestic violence context are Trespass to person which includes Buttery²³, Assault,²⁴ and False imprisonment²⁵ and Negligence.²⁶ Negligent conduct may amount to domestic violence, when a person fails in his duty to take care.²⁷

Danages²⁸ and Injunctions²⁹ are the remedies given under tort law. But in India, it is almost impossible for a woman to obtain a restraining order against a violent husband unless she files for divorce or judicial separation. So having a civil law which provides emergency protection and tangible relief in addition to criminal law remedies of arrest would be necessary to give complete protection and safety to women facing violence.³⁰

IV. Comprehensive Law on Domestic Violence

The law on domestic violence was enacted keeping in view the rights guaranteed under articles 14, 15 and 21 of the constitutions to provide for a remedy under civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.³¹

The Protection of Women from Domestic Violence Act defines 'Domestic Violence'³² as, any act or omission or commission or conduct of the respondent that 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 or emotional abuse and economic abuse; or

a) 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 any property or valuable security; or

b) 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

c) Otherwise injures or causes harm whether physical or mental, to the aggrieved person.

The definition of an aggrieved³³ person provides protection to every lady living with a male for any kind of ill-treatment within the closed doors.³⁴ Further the respondent under the definition given in the act is any male, adult person who is, or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this act.³⁵ Proviso to section 2(q) says and aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

Under this act the information regarding an act or acts of domestic violence does not necessarily have to be lodged by the aggrieved party but by any person who has reason to believe that an act of domestic violence has been, is being, or is likely to committed, may give information to the concerned protection officer.³⁶

To save the aggrieved person from economic abuse after she raised the voice against the domestic violence inside the closed rooms allows magistrates to impose monetary relief and monthly payments of maintenance.³⁷ In addition to this magistrate can pass an order directing the respondent to pay compensation for the injuries, including mental torture and emotional distress caused by the acts of domestic violence committed by the respondent.³⁸

An important feature of the Act is a woman's right to secure housing. The experience of women's organizations working with battered and harassed women is that it is the fear of being thrown out of the matrimonial home or any shared household that has been compelled these women to put up with violence. The Act states that every woman in domestic relationship shall have the right to reside in the shared household whether or not she has any right, title or beneficial interest in the same.³⁹ This right is secured by a residence under, which is passed by a Court of Magistrate.⁴⁰

The Act also ensures speedy justice as the court has to start proceedings and have the first hearing within 3 days of the complaint being filed in court and every case must be disposed of within a period of 60 days of the first hearing.⁴¹ The act also provides for the machinery for implementation of the act and therefore proper implementation of the act may be insured.

Provisions relating to duties of Police Officers, Service providers, Magistrate⁴², Protection Officers⁴³ and Government⁴⁴ make the intention and will of the legislature clear regarding its implementation. The service of the welfare expert⁴⁵ and counseling⁴⁶ are also ensured by the provisions of the act. The act further provides for the Shelter Homes⁴⁷, Medical Facilities⁴⁸, Service Providers⁴⁹ for proper care and protection of aggrieved persons to ensure full protection on the part of the states.

V. Conclusion

The remedies under the Act allows for a more immediate and practical solution to the problem of domestic violence.⁵⁰ The legislature by enacting this Act has attempted to provide protection and assistance to women facing domestic violence within four walls of their homes.

A law that encompasses all women's experience of violence, and addresses the issue adequately is an apt law. Though the legislation has been thoroughly prepared, lacunas will always be there leading to accuse circumventing the law. But while such circumvention takes place, it becomes the duty of the judge to interpret the provision on the lines of the objective that violence within the home is not acceptable.

References:

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1. Aja Singh, "Domestic Violence under Indian Legal Scenario" in Singh, A.K. Singh, S.P.Pandey (ed.) Domestic Violence against women in India, Gurgaon: Madhav Books.
2. Jaising,I, (2009), Hand Book on Law of Domestic Violence, Wadhwa: Butterworth's
3. Misra,P. 'Protection of women from domestic violence Act, 2005-A critical evolution' in Singh, A.K. Singh, S.P.Pandey (ed.) Domestic Violence against women in India, Gurgaon: Madhav Books.
4. In defining 'dowry' the phrase 'in consideration of marriage' was replaced by 'in connection with the marriage' and 'or after the marriage' was replaced by 'or any time after the marriage' to widen the definition but could not adequately cover all situations. It may be difficult to prove that demands made a couple of years after marriage were 'in connection with marriage'.
5. Jaising,I, (2009), Hand Book on Law of Domestic Violence, Wadhwa: Butterworth's
6. Cruity S, 498A, Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Expansion – For the purpose of this section 'cruelty' means. a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (Whether mental or physical) of the woman; or b) harassment of the woman where such harassment is with a view to coercing her or any person related to her too meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. (Inserted in 1983)
7. Dowry death-S. 304-B (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by the her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death. S-304B (2) whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. (inserted in 1986)
8. Presumption as to dory death-S 113-B: When the question is whether a person has committed the dory death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for or in connection with any demand for dory, the court shall presume that such person had caused the dory death. (Inserted in 1986).
9. Presumption as to abetment of suicide by a married woman-S, 113-A: When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband had subjected her to cruelty, the court may pressure having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband (Inserted in 1983).
10. Jaising,I, (2009), Hand Book on Law of Domestic Violence, Wadhwa: Butterworth's
11. Tukaram VS. State of Maharashtra (1979) 2SCC 143.
12. Vijender Kumar.S. (2007), Law relating to Domestic Violence, Hyderabad, Gogia & Co;
Revathy, R (2004) Law relating to Domestic Violence Act, Hyderabad Asia law house, Hyderabad, 2004.
13. Kothr J. (2005), 'Criminal law on Domestic Violence: Promises and Limits, Economic and Political Weekly., Nov. 2005, Revathy, R (2004) Law relating to Domestic Violence Act, Hyderabad Asia law house, Hyderabad, 2004.
14. Tukaram VS. State of Maharashtra (1979) 2 SCC 143
15. Vijender Kumar.S. (2007), Law relating to Domestic Violence, Hyderabad, Gogia & Co;
Kothri J (2005) Criminal Law on Domestic Violence : Promises and Limits', Economic and Political Weekly, Nov. 2005.
16. Misra, P, 'Protection of women from domestic violence Act, 2005-A critical evaluation' in Singh, A.K. Singh, S.P.Pandey (ed.) Domestic Violence against women in India, Gurgaon: Madhav Books.
17. Section 323 IPC

18. Section 325 IPC
19. Section 326 IPC
20. Section 509 IPC
21. Kothri, J. (2005), 'Criminal law on Domestic Violence: Promises and Limits', Economic and Political Weekly, No, 2005.
22. Jaising, I. (2009), Hand Book on Law of Domestic Violence, Wadhwa: Butterworth's
23. Battery is the application of force to the person of another without any lawful justification. Salmond.
24. "Assault is an act of the defendant which causes in the minds of the plaintiff reasonable apprehension of infliction of a battery on him by the defendant" Winfield.
25. "False imprisonment consists in Imprisonment of a total restraint for some period, however, short, upon the liberty of another without sufficient justification" Winfield.
26. Negligence as a tort is the breach of a legal duty to take care which results in damages", Winfield.
27. For example, failure to act to prevent acts of domestic violence, depriving food etc.
28. Monetary compensation for harm caused, For example, medical expenses.
29. A court order by which a person is ordered to do or refrain from doing something.
30. Kohri, J (2005) 'Criminal law on Domestic Violence: Promises and Limits', Economic and Political Weekly, Nov, 2005.
31. Statement of object and reasons, The Protection of Women from Domestic Violence Act, 2005.
32. Section, The Protection of Women from Domestic Violence Act, 2005.
33. Section 2(a) Aggrieved person means any woman who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.
34. Singh, C.P. "The Protection of women from domestic violence Act, 2005: A critical analysis" in Singh, A.K. Singh, S.P. Pandey (ed.) Domestic Violence against women in India, Gurgaon, MahavBooks.
35. Section 2(q) of The protection of Women from Domestic Violence Act, 2005,
36. Section 4 of The protection of Women from Domestic Violence Act, 2005,
37. Section 20 of The protection of Women from Domestic Violence Act, 2005,
38. Section 22 of The protection of Women from Domestic Violence Act, 2005,
39. Section 17 of The protection of Women from Domestic Violence Act, 2005,
40. Section 19 of The protection of Women from Domestic Violence Act, 2005,
41. Section 12 of The protection of Women from Domestic Violence Act, 2005,
42. Section 5 of The protection of Women from Domestic Violence Act, 2005,
43. Section 8 and Section 9 of The protection of Women from Domestic Violence Act, 2005,
44. Section 11 of The protection of Women from Domestic Violence Act, 2005,
45. Section 15 of The protection of Women from Domestic Violence Act, 2005,
46. Section 14 of The protection of Women from Domestic Violence Act, 2005,
47. Section 6 of The protection of Women from Domestic Violence Act, 2005,
48. Section 7 of The protection of Women from Domestic Violence Act, 2005,
49. Section 10 of The protection of Women from Domestic Violence Act, 2005,
50. Vijender Kumar, 5 (2007), Law relating to Domestic Violence, Hyderabad; Gogia & Co.

POLITICAL ECONOMY

"The power exercised by different classes of society and their social values were recognized explicitly as important factors governing both resource utilization and income distribution"

-Bi-centenary year volume of Adam Smith (1976, University of Madras Publications (P.7)