

DOMESTIC VIOLENCE IN INDIA-A HUMAN RIGHTS APPROACH

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INTRODUCTION

Domestic Violence against women is widespread phenomena across different economic, age groups, culture and society in any country. Women are most vulnerable and marginalized sections of the society. They are the soft targets for various unlawful and suppressive activities in different spheres of social life. DV is a significant problem for those whose life is affected by this issue, the social, health and criminal justice agencies that respond to it, and wider society must bear the costs. DV against women is understood as to situation supported and reinforced by gender norms and values that place women in a subordinate position in relation to men. DV is linked to women's disadvantageous position in the society, especially in matrimonial homes. Therefore, DV is recognized as the significant barriers of the empowerment of women, with consequences of women's health, their health-seeking behavior and their adoption of small family norm.

The object of the DV Act is to provide more effective protection to helpless and shelter less victims and to ensure the rights of women guaranteed under the Constitution. The title of the enactment is highly suggestive. DV Act has been enacted keeping the view Articles 14, 15 and 21 of the Indian Constitution. Article 15(3) of the Constitution of India says that the State can make special provisions for women and children. DV Act is not intended to break-up the relationship but in fact to boost-up, maintain and continue with the relationship. DV Act is like 'Balm' to a wound. It is a laudable piece of legislation.

Various types of Domestic violence

Physical violence

It means that the perpetrator uses force against the victim, which causes injury and hurt. The general definition of physical violence is that an act or conduct causing bodily pain, harm, or danger to life, limb, or health—for example, slapping, criminal force, and assault, etc. It also

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includes sleep deprivation, forcing wives to take drugs or alcohol, denial of medical care by their husbands. According to World Health Organization, 38% of females are murdered by their intimate partners. During pregnancy, women are facing a lot of physical violence in India.

Emotional Abuse

According to the Istanbul convention, psychological violence means the intentional conduct of seriously impairing a person's psychological integrity through coercion or threat. It includes threats, criticism, separation, public modification, steady personal devolution, controlling behavior, harassment, verbal abuse, etc. Due to the emotional abuse, women face anxiety, fear, emotional distress, depression, suicidal thoughts, eating disorders, etc.

Sexual assault

According to the World Health Organization, it means a sexual act, an attempt to obtain a sexual act. It includes sexual/reproductive coercion, marital rape, sexual lewd gestures/remarks or non-physical events, etc.

Economic abuse

Economic abuse is also called financial abuse. It means one partner has control over the other partner's access to economic resources. During the covid 19 lockdown in India in 2020, women faced economic abuse because they lost their jobs and increased their dependency on the perpetrator's income. It includes exploiting the resources of victims (valuable things, money, etc.), forcing or pressurizing the family members of the victims to sell the properties, preventing the victims from obtaining education, etc.

DV Act 2005- Civil and Criminal: In brief

DV Act consists of totally 37 sections with five chapters. First chapter is preliminary of Sec1 and 2. Second chapter with S.3 defines the words 'domestic violence'. Third chapter deals with the power and duties of Protection Officers, Service Providers etc. through Ss.4 to 11. Fourth chapter is important one, which deals the procedure for obtaining orders of relief's viz. Sec.12 to 29. Last and fifth chapter is a miscellaneous from Ss.30 to 37.

To carry out the provisions of the DV Act, in exercise of powers conferred by S.37, the Central Government has passed the Protection of Women from Domestic Violence Rules, 2006. There are 17 Rules to aid and implement the DV Act.

Any order passed u/s 12 is civil in nature, but power is vested with the Magistrate. The Act has been enacted to provide a remedy in civil law for the protection of women who are victims of DV and to prevent the occurrence of DV in the society u/s 18 to 23.

The commendable provisions in the DV Act are S.18, which deals with protection orders in tune with the object of the Act. There are two provisions of Ss.31 and 33 which prescribe penalty for breach of protection order by respondent and for not discharging duty by Protection Officer respectively.

Role of judiciary for the protection of women from Domestic violence

The judiciary being the guardians of the fundamental rights of the citizens of this country plays an important role for the protection of human rights of women. The followings are the important judgment given by the supreme court of India for the protection of Human rights.

in the case of *Ajay Kumar v. Lata alias Sharuti*² held that in accordance with the proviso to the section 2(q) of the Protection of Women from Domestic Violence Act, 2005, it indicates that both, an aggrieved wife, or a female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner, as the case may be.

Supreme Court: Answering important question pertaining to the interpretation and working of the Protection of Women from Domestic Violence Act, 2005 (DV Act) in relation to right of residence in the shared household, the 3-judge bench of Ashok Bhushan, R. Subhash Reddy and MR Shah, JJ in the case of *Satish Chander Ahuja v. Sneha Ahuja*³, has held that “The living of woman in a household has to refer to a living which has some permanency. Mere fleeting or casual living at different places shall not make a shared household.” In the judgment running into over 150 pages, the Court elaborately discussed and interpreted the provisions and scheme of DV Act.

² (2019) 15 SCC 252

³ (2021) 1SCC 414

Overruling the law laid down in *SR Batra v. Taruna Batra*⁴, , the Court held that respondent in a proceeding under Domestic Violence Act can be any relative of the husband and in event, the shared household belongs to any relative of the husband with whom in a domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household. In *SR Batra v. Taruna Batra*, a two judge-bench had held that where it was held that the wife is entitled only to claim a right under Section 17(1) to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.

Key Takeaways from The Judgment What Is A Shared Household? “Means and includes” The definition of shared household in Section 2(S) of the DV Act is an exhaustive definition. The first part of definition begins with expression “means” which is undoubtedly an exhaustive definition and second part of definition, which begins with word “includes” is explanatory of what was meant by the definition. The use of both the expressions “means and includes” in Section 2(s) of Act, 2005,

Thus, clearly indicate the legislative intent that the definition is exhaustive and shall cover only those which fall within the purview of definition and no other. Conditions to be fulfilled for a shared household (i) person aggrieved lives or at any stage has lived in a domestic relationship.

(ii) (a) includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent and owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and (b) includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

in *Neelam Gupta v. Mahipal Sharan Gupta*⁵ the Supreme Court has held that women would be entitled to a shared residence in lieu thereof husband should provide her with a suitably reasonable accommodation. The protection order was granted but disposed of way back on 17-6-

⁴ (2007) 3 SCC 169

⁵ (2020) 11 SCC 232

2008 by Mahila Court. The Supreme Court disposed of the appeal with certain directions as the matter was mediated and the parties have decided to part away by filing a petition under Section 13-B of the Hindu Marriage Act. This shows that mediation is an alternative remedy applicable to such litigation also.

*In Shyamlal Devda v. Parimala*⁶ the Supreme Court has once again reiterated that provisions of Section 482 of CrPC can be invoked for quashing the complaints under the Domestic Violence Act. The person aggrieved has been explained and the maintainability of the complaint makes it clear that domestic violence complaint can be lodged or filed in the Court where the person aggrieved permanently or temporarily resides or carries out his business or is employed. Objections, so as to challenge the jurisdiction of the Metropolitan Court of Bangalore, were turned down against the husband and parents-in-law.

*in Lalita Toppo vs The State of Jharkhand and Anr*⁷ The Supreme Court observed that a live-in partner can seek maintenance under the provisions of the Protection of Women from Domestic Violence Act, 2005. A three-judge bench comprising the then CJI Ranjan Gogoi, Justice Uday Umesh Lalit and Justice KM Joseph was considering the questions referred to it in Lalita Toppo vs. State of Jharkhand. The Reference Before the apex court, an order of Jharkhand High Court, which held that Section 125 CrPC does not provide for the grant of maintenance to a woman who is not legally married to the person to whom such maintenance is claimed, was assailed. In this case, it was admitted that it was a live-in relationship.

A two-judge bench, comprising Justice TS Thakur and Justice Kurian Joseph, referred the following questions to a larger bench. Whether the living together of a man and woman as husband and wife for a considerable period of time would raise the presumption of a valid marriage between them and whether such a presumption would entitle the woman to maintenance under Section 125 CrPC?

Whether strict proof of marriage is essential for a claim of maintenance under Section 125 CrPC having regard to the provisions of the Domestic Violence Act, 2005? Whether a marriage performed according to the customary rites and ceremonies without strictly fulfilling the

⁶ (2020) 3 SCC 14

⁷(2019) 13 SCC 786

requisites of Section 7(1) of the Hindu Marriage Act, 1955, or any other personal law would entitle the woman to maintenance under Section 125 CrPC? Referring to provisions of Domestic violence Act, the bench observed that the petitioner, in this case, would have an efficacious remedy to seek maintenance under the Act even assuming that she is not the legally wedded wife and, therefore, not entitled to maintenance under Section 125 of the Code of Criminal Procedure, 1973.

It also said that economic abuse also constitutes domestic violence as per the provisions of the Act. In fact, under the provisions of the DVC Act, 2005 the victim i.e. estranged wife or live-inpartner would be entitled to more relief than what is contemplated under Section 125 of the Code of Criminal Procedure, 1973, namely, to a shared household also, the court said. Declining to answer the questions referred to it, the bench said: “The questions referred to us by the Referral Order were formulated on the basis of the decisions of this court rendered

in *YamunabaiAnantraoAdhav vs. AnantraoShivramAdhav and another*⁸ and *SavitabenSomabhaiBhatiya vs. State of Gujarat*⁹ and others which were rendered prior to the coming into force of the DVC Act, 2005. In view of what has been stated herein before, it is, therefore, our considered view that the questions referred would not require any answer.” The bench disposed of the appeal directing the appellant to approach the appropriate forum under the provisions of the Domestic Violence Act.

In the landmark case of *Rupali Devi vs State of Uttar Pradesh*¹⁰ the Supreme Court has said explicitly that women can file criminal charges related to cruelty from the location where they have sought refuge after leaving or being pushed out of their matrimonial home. The Supreme Court ruled that Section 498A of the Indian Penal Code (IPC) covers both the wife’s mental and physical health. Even if a wife leaves her matrimonial home and returns to her parental home, the acts performed by the husband in the matrimonial home that constitute cruelty within the meaning of Section 498A can have negative consequences for her mental health in the parental home

⁸ 1988 (1) MWN (Cr.LJ) 74

⁹(2005) 3 SCC 636

¹⁰ (2019) 5 SCC 384

In the case of *Sangita Saha vs. Abhijit Saha And Others*¹¹, the Apex Court has held that petitioner is entitled to relief under the DV Act only in case she establishes domestic violence. in absence of the proof of the ingredients of domestic violence, the wife is not entitled to relief provided under the DV Act

Maintenance and Welfare of Parents and Senior Citizens Act has no overriding effect over the right of residence of a woman in a shared household within the meaning of the Protection of Women from Domestic Violence Act was decided by the Supreme Court

In *S Vanitha vs. Deputy Commissioner, Bengaluru Urban District*¹² a senior citizen couple had filed an application under the provisions of the Senior Citizens Act seeking eviction of their daughter in law and granddaughter from a residential house. Their application was allowed by the Assistant Commissioner and Karnataka High Court had given the orders to the appellant to evict the said house. Appellant filed a writ appeal in SC stating that she can't be evicted from the shared household because of the protection given to her u/s 17 of the Protection of Women from Domestic Violence Act 2005. She also argued that the old couple has not right to order her eviction under Senior Citizens Act, 2007,

In *Satish Chandra Ahuja vs. Sneha Ahuja*. SC considered both the above mentioned legislations and noted that according to Senior Citizens Act, Senior citizens may have the authority to order an eviction but only if it is necessary to ensure the maintenance of the senior citizens or the parents. The court said "In the event of a conflict between special acts, the dominant purpose of both statutes would have to be analyzed to ascertain which one should prevail over the other". SC contended that the law protecting the interest of senior citizens is intended to ensure that they are not left destitute, or at the mercy of their children or relatives and on the other hand, the purpose of the PWDV Act 2005 can't be ignored by a sleight of statutory interpretation. It was decided that both the statutes should be harmoniously construed.

Therefore, the right of a woman to secure a residence order in respect of a shared household cannot be defeated by the simple expedient of securing an order of eviction by adopting the summary procedure under the Senior Citizens Act Hence, SC observed that since both the

¹¹ (2019) 18 SCC 81

¹² (2020) SCC ONLINE 1032

legislations are important in the case, neither of them can be ignored and it would be appropriate for the Tribunal constituted under the Senior Citizens Act 2007 to appropriately mould reliefs, after noticing the competing claims of the parties claiming under the PWDV Act 2005 and Senior Citizens Act 2007.

Hence, the decision was taken that Section 3 of the Senior Citizens Act, 2007 cannot be deployed to over-ride and nullify other protections in law, particularly which of a woman's right to a "shared household" under Section 17 of the PWDV Act 2005

*In Shalu Ojha vs Prashant Ojha*¹³ Amount of interim maintenance to be decided after evidence is led on same. Protection of Women from Domestic Violence Act, 2005. Section 12 Amount of Interim Maintenance depends on income of husband. Final view there about can be taken only after evidence is led by both the parties and the veracity of their respective stands is tested with their Cross Examination, in the light of material which both parties want to produce.

CONCLUSION

This Domestic Violence Act, 2005 is a two-tier mechanism to save the marital relationship by giving a chance to the respondent to understand the need of the aggrieved person before aggravating the issue through the police and criminal prosecution. The court should keep the scales of justice balanced by considering the marital relationship or shared household or DV. S.31 of DVC Act gives the power to execute only the protection order. If the protection order is compiled pending criminal case the accused may be discharged on application from the aggrieved person. For other reliefs, one has to go to the civil court for execution of the order under CPC.

Now, the judiciary recognized live-in-relationship partner's right to invoke the DV Act for any relief. It is highly a welcome move. In order to bring an action and to get a relief under the Act the aggrieved person has to show that she is in domestic relationship with the respondent or has been in a domestic relationship with him. Despite efforts made by various stakeholders of society and NGOs dealing with women's rights to curb menace of DV there is a rise in DV. It is, therefore, necessary that every member of the society and other organizations are duty bound to ensure that every woman lives a voice full or joyful life than violence faced life.

¹³ (2018) 8 SCC 452