



Constitutional Prospective of Domestic Violence Act, 2005

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RESEARCH ARTICLE Constitutional Prospective of Domestic Violence Act, 2005
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The Article draws attention towards the present Constitutional prospective of domestic violence Act, 2005. This article highlight the constitutional provisions and provision enshrined under the Act. The domestic violence is increases day by day in the present society. In this article authors also elaborate the Fundamental rights given to women and also discussed the landmark judgments relating to domestic violence. At last the authors also evaluate the Domestic violence act, 2005.

KEYWORDS

Domestic violence Against Women in India, Fundamental rights, Constitution of India, Protection of Women.

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.

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 dependant on the assailant. In fact, even where the victim was the wife of the assailant and could approach the Courts under Section.498A of the IPC, she would presumably have to move out of her matrimonial home to ensure her or Victim 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.

Review of Important Provisions The 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 Section.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.

The Act thus deals with forms of abuse that were either not addressed earlier, or that were addressed in ways not as broad as done here. For instance, it includes in its ambit sexual abuse like marital rape which, though excluded under the IPC, can now be legally recognized as a form of abuse under the definition of sexual abuse in this Act. The definition also encompasses claims for compensation arising out of domestic violence and includes maintenance similar to that provided for under S.125 of the Code of Criminal Procedure (CrPC). Nevertheless, the claim for compensation is not limited to maintenance as allowed by that provision. It is noteworthy that the maintenance available under this section must be in correspondence with the lifestyle of the aggrieved party. Lastly, the Act identifies emotional abuse as a form of domestic violence, including insults on account of the victim’s not having any children or male children.

Constitutional Perspectives

The enactment in question was passed by the Parliament with recourse to **Article 253 of the Constitution**. This provision confers on the Parliament the power to make laws in pursuance of international treaties, conventions, etc. The Domestic Violence Act was passed in furtherance of the recommendations of the United Nations Committee on the CEDAW. The Act encompasses all the provisions of the Specific Recommendations which form a part of General Recommendation no.19, 1992.

Protection of Women and Fundamental Rights

The Statement of Objects and Reasons declares that the Act was being passed keeping in view the fundamental rights guaranteed under Articles 14, 15 and 21. Article 21 confers the right to life and liberty in negative terms, stating that it may not be taken away except by procedure established by law,

which is required, as a result of judicial decisions, to be fair, just and reasonable. The right to life has been held to include the following rights (which are reflected in the Act), among others:

The right to be free of violence: In **Francis Coralie Mullin v. Union Territory Delhi, Administrator**, the Supreme Court stated, any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.

This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence (and is hence punishable under the Act). Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person. Apart from this, the Act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of domestic violence. By adoption of such an expansive definition, the Act protects the right of women against violence.

The right to dignity: In **Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan**, the Supreme Court emphasized the fact that the right to life included in its ambit the right to live with human dignity, basing its opinion on a host of cases that had been decided in favor of this proposition. The right to dignity would include the right against being subjected to humiliating sexual acts. It would also include the right against being insulted. These two facts of the right to life find mention under the definitions of sexual abuse and emotional abuse, respectively. A praiseworthy aspect of the legislation is the very conception of emotional abuse as a form of domestic violence. The recognition of sexual abuse of the wife by the husband as a form of violation to the person is creditable; especially as such sexual abuse is not recognized by the IPC as an offence. These acts would fall within the confines of domestic violence as envisaged by the Act, though the definition would not be limited to it.

The right to shelter: In **Chameli Singh v. State of U.P.**, it was held that the right to life would include the right to shelter, distinguishing the matter at hand from **Gauri Shankar v. Union of India** where the question had related to eviction of a tenant under a statute. S. 6 and 17 of the Domestic Violence Act reinforce this right. Under S.6, it is a duty of the Protection Officer to provide the aggrieved party accommodation where the party has no place of accommodation, on request by such party or otherwise. Under S.17, the party's right to continue staying in the shared household is protected. These provisions thereby enable women to use the various protections given to them without any fear of being left homeless.

Article 14 contains the equal protection clause. It affirms equality before the law and the equal protection of the laws. Article 14 prohibits class Legislation, but permits classification for legislative purposes. A law does not become unconstitutional simply because it applies to one set of persons and not another. Where a law effects a classification and is challenged as being violative of this Article, the law may be declared valid if it satisfies the following two conditions:

1. The classification must be based on some intelligible differentia,
2. There must be a rational nexus between this differentia and the object sought to be achieved by the law.

As a result of the ruling in cases such as **Royappa v. State of Tamil Nadu**, any law that is arbitrary is considered violative of Article 14 as well. This provision is significant in putting a stop to arbitrariness in the exercise of State power and also in ensuring that no citizen is subjected to any discrimination. At the same time, it preserves the State's power to legislate for a specific category of people.

Article 15 disallows discrimination on the grounds of religion, caste, sex, race, etc., but permits the State to make special provisions for certain classes of persons, including women and children.

The Domestic Violence Act promotes the rights of women guaranteed under Articles 14 and 15. Domestic violence is one among several factors that hinder women in their progress, and this Act seeks to protect them from this evil. It indeed effects a classification between women and men, protecting only women from domestic violence, but this classification is founded on an intelligible differential, namely, gender, and also has a rational nexus with the object of the Act. Further, the Act is far from arbitrary, in that it is a well-thought and necessary attempt to curtail domestic violence and eventually vanquish it. It is to be remembered that it is generally women who are the victims of domestic violence, and not men. At this stage, it is also essential to keep in mind Article 15(3) which empowers the State to make legislations like this for the benefit of women, thus creating an exception in their favour against the operation of Article 15(1).

Where the Act Fails

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 recognized 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.

CONCLUSION AND EVALUATION

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 off 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.

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