

## Domestic Violence Act 2005: a Ray of Hope

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The institution of family and marriage are recognized as the best creations created by human beings. In every culture and society marriage is the institution which promises security & happiness, and it creates the base for family, an institution which depends on mutual dependency and provides physical, mental and emotional support to its members. The peaceful and human face of these institutions has been tarnished through the evil of domestic violence which vanishes the feeling of safety, the base of kinship system. The problem of domestic violence is not limited to any specific culture or region but it has a universal nature.

In general terms domestic violence signifies that violent behavior which accuses between two persons, who share the same household, but in factual terms it has become the synonym for the violence which is faces by the women in their own home by their husband or in-laws in their daily life. The victims of domestic violence face not only physical & verbal abuses but they live in fear in their own home and they have no control on their own lives. Traditionally domestic violence is an instrument used by men to control their women. Unfortunately, this social evil has not been given enough attention by the state and society for years and it recognized as a personal problem rather than a social problem<sup>2</sup>.

### Struggle for Domestic Violence Bill

The problem of domestic violence has always been a cause of concern for sensitive intellectuals, social & women activists. The government of India has enacted some laws to safeguard the interest of women. In 1983 domestic violence first time recognized as an act of criminal offence under section 498A of the Indian Penal Code (IPC). According to this criminal law beating, mental or physical torture or general cruelty to a wife by her husband and his relatives is a non-bailable offence. Although the IPC 498A was aimed to punish the guilt but very soon it was realized that it does not take into account the other kind of harassments such as mental torture, deprivation of finances, denial of maintenance and abuse of children. It does not save a woman from gruesome conditions and a condition of continued violence<sup>3</sup>. The civil law (498A) does not however, addresses this problem in its integrity, therefore these factors compelled the women activists to prepare a model bill on prevention of domestic violence which was presented to government of India in 1994. This proposed bill was drafted by Supreme Court advocate Indira Jaisingh and the lawyers, collectively with social activists who had been dealing with cases of domestic violence for over two decades. Under these pressures the government of India introduced a bill in *Lok Sabha* on domestic violence entitled "The Protection from Domestic Violence Bill 2001". The Bill was finally tabled in *Lok Sabha* on 8<sup>th</sup> March 2002. But government's version of the bill was a far cry from the expectation due to two major reasons; firstly, it was restricted only to the victims under 'valid marriage'. Thus, it excluded protection to women, who are second wives or victim of violence before marriage. Secondly, it defined domestic

violence as conduct whereby the abuser habitually assaults the person aggrieved or make her life miserable by his conduct. This bill was rejected by women activists in totality because of its dangerous implications which legitimized violence against women. They requested the government to widen the approach of the bill, changing of the definition and inclusion of all categories of women, without restricting it only to those legally married.

After much pressure and efforts by women activists it became necessary for the Government of India to enact a law, keeping in view the rights guaranteed under article 14, 15 and 21 of the constitution<sup>3</sup> to provide for a remedy under the 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. Finally a new bill entitled 'Domestic Violence Act 2005' was passed by the Parliament in August 2005 and assented by the president on 13<sup>th</sup> September 2005 but implementation was pending as detailed consultations was required with the state and other agencies for framing the rules. The Ministry of Women and Child Development had simultaneously issued another notification laying down the rules framed for the implementation of the act.

The struggle for anti-domestic violence law goes back more than 16 years. As said by Indira Jaisingh, a well-known Supreme Court lawyer and women's activist, (for 16 years she has been at the forefront of a battle to help all women who have been victim of domestic violence), "the most difficult part was to convince law makers and policy makers that such a thing exists. They did not know that something like domestic violence needed to be dealt with by law. The words 'domestic violence' did not exist in Indian law. It is true that we did have section 498A in the Indian Penal Code which deals with cruelty to a married woman. However, there was no explicit definition of domestic violence. There was no explanation that verbal, emotional and sexual abuse is also violence. For them, violence meant only beating a woman, that too severe and repeated beating"<sup>6</sup>.

### **Main Provisions of the Domestic Violence Act 2005**

The Protection of Women from Domestic Violence Act 2005 was brought into force by the Indian government from October 26, 2006. The Act was passed by the Parliament in August 2005 and assented to by the President on 13 September, 2005. The Ministry of Women and Child Development has issued notification for enactment of the act, which is a landmark bill in protection of women in their marital home and strengthening their position against all kind of violence. The new act contains five chapters and 37 sections<sup>7</sup>. As of November 2007, it has been ratified by four of the twenty-nine state governments in India; namely Andhra Pradesh, Tamil Nadu, Uttar Pradesh and Orissa. Of about 8,000 criminal cases registered all over India under this act, Rajasthan had 3440 cases, Kerala had 1,028 cases, while Punjab had 172 cases registered<sup>8</sup>. Its main features are:

1. Domestic Violence Act 2005 widens definition of domestic violence and it includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic under the category of domestic violence, harassment by the way of unlawful dowry demands to the women or her relatives would also be covered under this definition (Ch.II, S.3). This is a

genuinely wide definition and covers every eventuality.

2. The definition of an 'aggrieved' person' is equally wide and covers not just the wife but female live-in partner from violence at the hands of the husband or male live-in partner or his relatives. The act extends its protection to women, who are sisters, widows or mothers and in live-in relationships with those living in a shared household related by consanguinity or adoption. The new bill provides for the women's rights to reside in the matrimonial or shared household. (Ch.I, S.2(a)). 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" but so that his mother, sister and other relatives do not go scot free, the case can also be filed against relatives of the husband or male partner. One great weakness of the previous National Democratic Alliance's (NDA) bill has been effectively removed in the present Act and that is that the magistrate has the powers to permit the aggrieved woman to stay in her place of abode and cannot be evicted by the husband in retaliation. This fear of being driven out of the house effectively silenced many women and made them silent sufferers. The court, by this new Act, can now order that she not only reside in the same house but that a part of the house can even be allotted to her for her personal use (Ch.IV, S.17) even if she has no legal claim or share in the property.

One of the most important features of the act is providing for appointment of protection officers, service providers, councilors and NGOs to provide assistance to the women like medical examination, legal aid, safe shelter etc. The new bill also gives a victim the right to residence and access to a protection officer, who is answerable to the courts.

The other relief envisaged under the act is that of the power of the court to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the abused, attempting to communicate with the abused, isolating any assets used by both the parties and causing violence to the abused, her relatives and others who provide her assistance from the domestic violence.

S.18 of the same chapter allows the magistrate to protect the woman from the acts of violence or even "acts that are likely to take place" in the future. According to one important provision of the act, action can be taken in the event of the respondent breaching the protection order or interim protection order can be passed by the magistrate in favor of the aggrieved women. Such an act will be defined as a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Similarly, non-compliance or discharge of duties by the protection officer also should be made an offence under the act with similar punishment<sup>9</sup>.

Domestic violence act 2005 also allows any person to information in good faith about domestic violence without any civil or criminal liability, which means that neighbours, social workers, relatives etc. can all take initiative on behalf of the victim (Ch.III, S4). This will help in situations where the aggrieved woman is unable to reach for help. The information is to be given to a police officer, protection officer, a notified service provider or

magistrate. They in turn are expected to brief the aggrieved women of her right to seek shelter, home, legal aid, medical services or file a complaint under section 498 A of the Indian Penal Code.

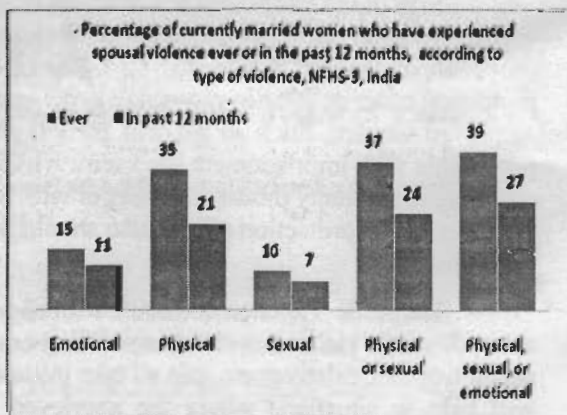
The Act allows magistrates to impose monetary relief and monthly payments of maintenance. The respondent can also be made to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and can also cover loss of earnings, medical expenses, loss or damage to property and can also cover the maintenance of the victim and her children (Ch.IV, S.20). S.22 allows the magistrate to make the respondent pay compensation and damages for injuries including mental torture and emotional distress caused by acts of domestic violence. Ch. V. S.31 gives a penalty up to one year imprisonment and/or a fine up to Rs. 20,000/- for an offence. The offence is also considered cognisable and non-bailable (Ch.V, S.32(i)), while S. 32 (2) goes even further and says that “under the sole testimony of the aggrieved person, the court may conclude that an offence has been committed by the accused”.

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 sixty days of the first hearing (Ch.IV, S.12 (a) (4) and (5)). It makes provisions for the state to provide for protection officers and the whole machinery by which to implement the act.

On the whole, the domestic violence act 2005 has a lot to offer women; it provides for compensation, promises relief and assures protection. This law is in addition to other laws. It is an improvement. It defines domestic violence to include all forms of violence and it provides a right to reside in the shared household. It provides accessible remedies and empowers judges to grant injunctions restraining violence. This is a civil law. The relief is civil relief. But if a civil court order is violated, that is an offence for which a man can be punished. The court to approach is the magistrate's court. This provision has been made to make the courts accessible to women at a place close to where they reside.

### Domestic Violence in India

A study by Kishor and Gupta (2009) provides information on the level, types, and frequency of spousal violence and extent of resulting injuries experienced by currently married women age 15-49. In addition, it examines the characteristics of women who suffer domestic violence to identify risk factors for violence. In India, significant proportions of currently married women experience emotional, physical and sexual violence by their current husband. Figure given below



Source: Kishor and Gupta, 2009

shows not only the high levels of different forms of violence, particularly physical and emotional violence, but also suggests that the majority of women who have ever been abused in their marriage are still being abused. Overall, 39% of currently married women have ever experienced any physical or sexual or emotional violence in their current marriage<sup>10</sup>. Further, 27 percent have experienced the violence in the past 12 months. Thus, among all currently married women who have experienced physical, sexual, or emotional violence, more than two-thirds (68%) have experienced the violence in the past 12 months and hence are likely to be still at risk.

### **The Challenge Ahead**

The passing of Domestic Violence act 2005 is an important marker in the history of women's movement in India. It acknowledges that Domestic Violence is a widely prevalent and universal problem of power relationship. Undoubtedly this new Act has been seen as a ray of hope which will provide relief to the women from domestic violence and get their due. Although the new bill has been welcomed by the women and social activists but the true enactment of this legislation is the real challenge. The complaint against our laws is that they are never implemented.

Existing laws relating to the family favors men, in terms of the economic imbalance in the relationship. Men are the earners and woman stay at home as home makers. This is slowly changing and more and more women are working now. But the mindset of people in society is that women are subordinate to men. This is true of all classes of society. This act therefore restores equality when it says 'stop violence against women'. The law introduces protection officers as people who will assist the court in implementing the act. Ideally, these should be sensitive qualified social workers. They will have to make sure that the relief given by the court actually gets to the woman.

In spite of increasing awareness towards domestic violence, this is a fact that the violence against women is rampant in the country. Atrocities against women in India are on an alarming rise. At every 26 minutes, a woman is molested; at every 34 minutes, a rape takes place; at every 42 minutes, some kind of harassment incidents occurs; at every 43 minutes, a woman is kidnapped and at every 93 minutes, a woman is burnt to death over dowry<sup>11</sup>. Worst is that kind of violence which is faced by women at home. Surveys conduct in the last few years underline that women, cutting across economic, social, educational, religious or geographical lines, face violence at home. A study carried out by the international centre for research on women (2004) find out that 40 percent of Indian women are victims of one or another kind of domestic violence<sup>8</sup> and the more shocking fact revealed by national family health survey (2005-06) that 56 percent of women agreed that the wife beatings were justified under some specific circumstances<sup>12</sup>.

Unfortunately, the vast majority of cases are never reported and the real challenge is unwrapping the silence that covers domestic violence, many victims accepts this barbaric act as their destiny. Especially in a traditional society like India where the structure of family is still patriarchal, a society based on equality and dignity of women is still far away. Family is the basic unit of society and the most unfortunate fact is that women are most vulnerable under their own home. In such circumstances domestic violence act has the provisions which the

average woman should keep it in mind for maintenance of her dignity. As suggested by Indira Jaisingh, 'An average woman must first of all remember that she has a right to be free from violence. This itself is empowering. The first form of help is self help. She must know that she cannot be thrown out of the shared household. She must be aware of her finances and of the finances of her partner. Many women sign documents presented to them by their partners in trust and then find out that they have been deprived of their assets or rights. This they must avoid. They must learn something about finance, accounts and taxation. They must remember that they too are contributing to the family income, even if they are not employed. Household work is as important as any other work'<sup>13</sup>.

We have to remember that creation of a peaceful world is possible only when a society can provide its women enough security to live fearlessly within their own homes. This Act does ensure that women have some weapon to fight back with.

But its limitations must be kept in mind. Misuse of the act, like all such acts in India, cannot be ruled out. However, this Act does ensure that women are not totally at the receiving end but have some weapon to fight back with. As Marx so concisely put it: "You cannot give equal laws to unequal people"<sup>14</sup>. In fact, with a system as corrupt as ours, money and muscle power will always present a threat in actual implementation of this law. As long as the woman stays a puppet or pawn in the hands of her male relatives, she will always be manipulated and used. However, with this Act, there is at last legal recognition of the scale of domestic violence that actually exists. This Act should also put an end to many of the misuses of the anti-dowry act. But when one sees the dismal record of implementation of acts related to giving relief to the oppressed, one cannot but be sceptical. Within the existing unjust and unequal bourgeois family system here is an act of legislature that gives oppressed women some respite, but a very temporary one until the hypocrisy of bourgeois monogamy exists.

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