



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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LEGAL CHALLENGES AND ISSUES IN IMPLEMENTING THE DOMESTIC VIOLENCE ACT

~ *V.U. Jyothi Kumar*

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The Bill for the Act was passed in the Lok Sabha on 24 August 2005 and in the Rajya Sabha on 29 August 2005. Further, the bill received the President's assent on 13 September 2009 and became a statute representing the Protection of Women from Domestic Violence Act, 2005.

LEGAL ISSUES

All are equal in the eyes of the law and every person, whether a national or a foreigner, is granted certain fundamental rights which, though not absolute, cannot be taken away from anyone. The rights enshrined under the Constitution of India ensure equality between men and women across the country. Mentioned below are some of the legal issues facing Domestic Violence Act in India.

It is an ignominy of the country and laws that despite their efforts, women are still struggling for their position and equality. Domestic violence is an example of the same. Coming to justice and remedy, it is unfortunate to evaluate that there is a lack of awareness about the laws and provisions of the act which could help them out.

According to the Act, the victim woman can straightly move to the Protection Officer under the Act for the sake of justice but it has been recorded that very few persons directly move to the Protection Officer in these cases and mainly first go to make a complaint before the police.

It is the Protection Officer who handles such cases but it is so unfortunate to see that the appointed Protection Officer takes up the cases just as mere work rather than taking up to provide aid to the

victim. The enactment of the law is such that the result should be given within 90 days but due to the lethargic and lenient work of officers, the cases remain unsolved within the stipulated time.

Apart from the above-mentioned issues, the law has been such that now a case, the laws made for the benefits and security of women are getting misused by them to make a trap against innocent men. We come across so many cases relating to this which shows sheer injustice to the men. Due to the exclusive application of these kinds of laws, it is only women who can make a complaint against men. It clearly violates the concept of equality before the law under A.14 of the Indian Constitution.

As per S.32(2) of the Protection of Women from Domestic Violence Act, 2005, the court of justice will always consider statements made by a victim as right and true. For establishing the commitment of the offence, the statement of such a woman is sufficient. Therefore, no need arises to provide any supporting evidence for it. This bars the remedial claim of men against women who have falsely trapped them by filing a false complaint to seek revenge over personal grudges.

Another issue is that if a victim woman files a complaint and it is deliberately considered that the abuse has been committed by the husband without any proof. She is not even asked to prove them. The magistrate directly takes steps for her protection to avoid the commission of the offence in the future under sec.18 of the act. This gives leverage of protection to a woman and chances of punishment of an innocent person.

LEGAL CHALLENGES

Apart from the issues, the act has some positive reliance as well. Although the Act is misused yet the purpose of the act was for benefit of the women. The act is a comprehensive statute. It applies to married women who have been with their partners in a shared household including both nuclear and joint families. Even the mothers, sisters, widows, or single women living with such an abuser person can get legal protection under the Act.

The Act also applies to those females who are In live-in-relationship as it provided a broad interpretation of the term “domestic violence” which included live-in-relationships. In the case of **Chanmuniya v. Virendra Kumar Singh Kushwaha**, the issue was related to the receiving maintenance in live-in relationships under Sec.125 of CrPC. The court said that the term “wife”

shall have a broad interpretation including such women who is living in a live-in relationship for a long time. There is no need for proof of marriage to get maintenance under S.125 of CrPC.

Further, in the case of **Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade**, the issue before the court was whether the relative of the husband includes females under sec.2(q) of Act. The court said that the females are considered a relative of the husband. Although, in the proviso of sec.2(q) the term “female” is not been used. However, the term “relative” does not restrict the inclusion of females.

In the case of **Harsora v. Kusum Harsora**, the scope of the Protection of Women from Domestic Violence Act, 2005 got broadened. The term “Adult Male” was deleted making way for the prosecution of victim women of harassment and abuse.

MISUSE OF DOMESTIC VIOLENCE ACT

In past years, it has been recorded that the laws made for the protection of women were getting misused by taking exorbitant advantage by filing false complaints.

Initially, S.498-A of IPC, 1860, and S.113-A of Indian Evidence Act, 1872 were inserted through the 1983 Criminal Law Amendment to govern the horrific incidents of newly married women because of dowry and other demands of their in-laws. The objective of the provision was to look after these evil offenses. Unfortunately, such women could also not receive any recourse from the public authorities as it was against the traditions.

It was seen in several cases that women falsely allege their husbands under S.498-A of IPC, 1860 for sake of revenge and personal grudges or to get rid of in-laws. The misuse of the section and other relatable Acts are still there and increasing at a fast pace. The educated women doing so know that the offence under this section is cognizable and non-bailable.

The Protection of Women from Domestic Violence Act, 2005 is inexhaustive and has several lacunas for only serving the false allegations of women and punishing innocent men. It is a general principle and the accused is presumed to be innocent until proven guilty. In these cases, the process to defend and prove innocence is completely barred.

CONCLUSION

The essence of a civilized society lies in ensuring Gender Equality. It is completely justified to take steps for the protection of women, but doing so should not violate the concept of equality. It can be seen that though the government is taking necessary steps to curb the act of domestic violence in society, it is failing to do so justifiably. The act of domestic violence has several defects which clearly seem to violate the principle of natural justice and provisions of other major laws.