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8. Domestic Violence Law in India and Challenges Ahead in Women Empowerment

Dr. Pooja Prashant Narwadkar
Principal, Bharati Vidyapeeth's, New Law College, Sangli.

Abstract

Before the PWDVA 2005 the issue of domestic violence was either linked to dowry-related violence or in criminal law. The loop-holes in the existing legal provisions, the weak implementation and the insensitive attitude was the root cause calling for the separate legislation.

The PWDVA2005 exists within the larger framework of gender-policy and women's rights in this country. The provision of remedial mechanism under the Act and infrastructure provided proves that the law painstakingly sets up, a violence free life for women. The Act also with the overwhelming welcome received little criticism as chances of being misused or abused are also possible under the existing framework.

To make women's life violence free it is still required to ponder upon pro-active approach of officers working under the Act and the awareness of law, the reliefs and remedies available to the victim. This poses every threat of women life though taken efforts by every social legislation in our country because the existing pattern since ancient times work with patriarchal approach. Moreover, the access of justice even though made easy for victim still the social mindset under the patriarchal structure throw the real challenges in real practice.

Keywords- Domestic violence, Empowerment, justice

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*"A total of 87,000 women were intentionally killed in 2017. More than half of them (58 per cent) – 50,000 – were killed by intimate partners or family members, meaning that 137 women across the world are killed by a member of their own family every day. More than a third (30,000) of the women intentionally killed in 2017 were killed by their current or former intimate partner– someone they would normally expect to trust...."*¹

Introduction

Legislative Response to the women's fights against the oppression in the country met positive response from state in the name of 'The Protection of Women from Domestic Violence Act 2005'.

The Protection of Women from Domestic Violence Act, 2005 (hereinafter quoted as PWDVA 2005) acknowledges domestic violence as a problem in itself as it destabilizes the age old excuse of "privacy" and exposes it as a 'Human Rights' issue. The United Nations Committee on CEDAW in its General Recommendation No. XII (1989) recommended the obligation for State parties.² The Act derives its mandate from The Vienna Accord of 1994³. Notably, it was for the first time that the subject of physical, psychological, sexual violence, against women was addressed vehemently. As a result in 1999 an optional protocol to the CEDAW was adopted. In 1995 the Beijing Declaration and the Platform for Action also expressed 'a serious concern' relating to women's rights.

Feature of the PWDVA, 2005

The Act for the first time consider violence as Human Rights issue and not a private matter to exclude the state jurisdiction, rather it held it obligatory for the state to intervene. Until then against violence within four walls and matters connected therewith or incidental thereto were dealt with privately. The Constitution and the international instruments adopted by the country provide guarantee to dispense actual justice to women and present law concerning domestic violence is an effort to give legal form to inherent sentiment of such guarantee.

The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain and presently where woman is subjected to cruelty by her husband or his relatives, they were punished under sec.498A of Indian Penal Code, but the Civil law was lagging behind. Therefore the Act, seeks to provide for the various safeguards against various types abuse. It was the first legislation to consider the vulnerability of woman in all relations

including those in live in relations, violence against them was severe but it was not properly addressed though the children out of this wedlock was protected. It covered protections to those who lived together in a shared house hold and are related by consanguinity, marriage or through a relationship of the nature of marriage or adoption. In addition in relationship with family members living together as a joint family are also included. Even the women who are sisters, widows, mothers, single woman, or living with the abuser are entitle to legal protection under the legislation. The act has made the definition of domestic violence in wider perspective to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional, or economic. Harassment by way of unlawful dowry demands to the women or her relatives were also be covered under the PWDVA, 2005.

The Act has considerably gone though the plight of victims when cases were lodged for cruelty before the act came in force and provided all relevant rights in the form of housing, rights to reside in the matrimonial house or share household irrespective of title or rights recognized. The Act empowers the magistrate to pass protection orders against erring perpetrator even it prevented him from entering the workplace or any other place frequented by the victim.

The PWDVA, 2005 provided the infrastructure in the name of Protection office and made them responsible under the Act to provide every support system to victim with respect to her medical examination, obtaining legal aid, safe shelter etc⁴

These and other features of the Act proved it as path-breaking law in the country It was welcomed from many corners of the society, but was also subjected to criticism from some quarters. The Act being cent per cent victim driven was also criticized from few corners of the society.

Implementation of PWDVA, 2005

For effective implementation of the Act precaution is taken to establish the authorities in the name of Protection officer, police officers and also for active participation of the public spirited persons and associations like NGOs and Service Providers, Shelter homes is taken. The Protection Officer⁵ is the immediate responsible authority created under the Act. They are public servants accountable to women victims of violence. They are expected to support the victim in all respect, through filing cases, assisting the court, making available every support system work for women in need.

The Act provides victim friendly process for the redressal and anyone who has reason to believe has also been allowed to initiate legal proceedings. Complaint can be from aggrieved, protection officer or any one on behalf of her, it can also be lodged by doctor. Act provides early

disposal of cases within sixty days. The provision for in-camera proceeding, Counseling can facilitate the parties to keep the matter limited to concerned and prevent unnecessary publicity.

Challenges in the effective implementation

Though the Act had many laudatory provisions and gradually the infrastructure is also being strengthened in last decade since the passing of the PWDVA,2005 it is to be remembered that this being the social legislation, not created a fear in the mind of perpetrators. This is same happening with all the social legislations since the independence. The root cause behind it is the strong patriarchal set up which has dominated the social structure, and the implementing authorities are not an exception. First decade was attributed to the awareness campaign among the masses about the process, rights, etc. and the training of the officers towards technicalities and gender sensitization.

To certain extent judiciary as usual contributed though judicial activism pronounced the judgments giving the beneficial interpretations regarding variety of rights in favour of the victim. Also it has reflected in the social alert though various conferences and seminars to deter the perpetrators but still the status of domestic violence victim have not improved. The social and cultural impediments are so strong and do not facilitate women to avail the legal recourse. No availability of the means of livelihood, job opportunities to women makes them dependent on the family members, the traditional bonds of family system allows men to work and women to take household responsibilities. This is still the status of rural India and women find themselves to suffer violence in silence as part and parcel of their life. The NCRB data 2016 still states boldly that India continues to be a terrifying place for women and children. Cases of 'crime against women' category reported an increase of 2.9 % in 2016 over 2015. And majority among those are "cruelty by husband or his relatives" is 32.6 %

The awareness of law as a campaign taken by government worked honestly and media also contributed its role but the ground reality is different. The woman though she knows the provisions and her rights, is still find better to stay away instead of fighting for her rights. There are many reasons behind this. The most important aspect is that, we in our country expect every reformation or positive change through law. It's not bad to expect law to be a tool for social transformation as its function is the same. But what is wrong is that its effective implementation does not solely dependent upon the stringent punishments but people must be educated to obey the law. To understand the value of legal system, its significance and its obedience should come from in-within individual and not from state compulsions. Educative factor is almost ignored in our country in respect of social legislations. This is the dire need of the day.

Conclusion

Though the object with which the PWDVA2005 was very laudable and it aimed at to stop the tragedy of the violence within four walls in the life of a woman, to develop her to the fullest extent. The law has to be implemented properly and the information should reach needy women. Change in men's mentality is very important. Organizations, police as well as all concerned authorities should work with gender sensitivity under this law so that it is implemented in this best possible way.⁶

The implementation of the earlier legislation were suffering because of inadequate financial resources. To make real effective implementation of the Act the Protection officers proactive approach and the awareness of law to the masses, is major challenge in our country. Moreover, the access of justice, the social mindset and the extreme patriarchal structure of our society from time immemorial throw the real challenges for the working of the PWDVA 2005.

Footnote

1. Key findings, United Nation office on Drugs and Crime-Global Study on Homicide-Gender related Killings of Women and Girls-2018
2. The United Nations Committee on Convention on all Forms of Discrimination Against Women in its General Recommendation No, xii(1989) has recommended that State Parties should act to protect women against violence of any kind especially that occurring within family.
3. The Vienna Accord of 1994 acknowledged domestic violence occurring within the family a serious human right issue and deterrent to the development of society.
4. Statement and Objects and Reasons of the PWDVA Bill 116 of 2005 Presented on 12th August 2005
5. Sec.8 of the PWDVA 2005
6. The Herald News Paper, 7th April, 2008, pg. 4.

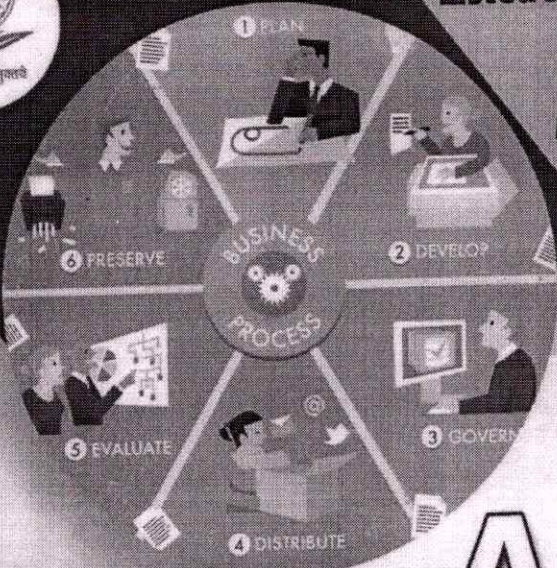
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