

## RIGHTS UNDER THE PROTECTION FROM DOMESTIC VIOLENCE ACT: THE ROLE OF PROTECTION OFFICER, POLICE OFFICER AND NGO'S IN KERALA

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### Abstract

This article briefly examines what domestic violence is and how our Act and laws deals with it. Women's are backward classes and vulnerable groups in the Indian society. Women are faced with many issues in the present setup of society. The term violence against women means any act of gender based violence. The Protection of women from Domestic Violence Act 2005, to provide civil remedies for women facing domestic violence in the form of protection order This article also provides the role of protection Officer, Police Officer and NGO's to protect women from domestic violence in the Kerala society.

### Introduction

The principle of gender equality is enshrined in the Indian constitution in its preamble, Fundamental rights, Fundamental duties and Directive principles. The constitution of India not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic education and political disadvantages faced by them. The status of women in India has been subject to many great changes over the past few millennia. From equal status with men in ancient times through the law points of the medieval period, to the promotion of equal rights by many reformers. The history of women in India has been eventful, in modern India women have held high offices in India including that of the President, Prime Minister, Speaker of Lok Sabha and Leader of the Opposition.

The constitution of India guarantees to all Indian women equality (Article 14), no discrimination by the state (Article 15 (1)), equality of opportunity (Article 16) and equal pay for equal work (Article 39 (d)). In addition, it allows special provision to be made by the state in favour of women and children (Article 15(3)). But domestic violence covers any pattern of incidents of controlling coercive or threatening behaviour, violence of abuse between people age sixteen or over who are or have been intimate partners or family members regardless of gender or sexuality domestic violence is most commonly experienced by women and perpetrated by men. There are many kinds of domestic violence such as physical assault, swounding, sexual assault, rape, threats to kill, harassment etc.

Domestic Violence has become a matter of great concern in the contemporary society, and is being discussed at various forums, compelling the attention of policy makers, judges, jurists and the entire intellectual and civil society. It is not only felt in Indian context but the whole world is facing the universal problem of domestic violence against women. Domestic violence is now recognized as a serious problem at global level both by the women who experience it and by the society as a whole. Domestic violence has many forms including physical violence, sexual abuse, emotional abuse, intimidation, economic deprivation and threats of violence. Violence can be criminal and includes wife battering, dowry harassment, dowry death, cruelty to women driving them to commit suicide or other forms of murder like female foeticide, female infanticide and sati, sexual abuse and stalking. Although emotional, psychological and financial abuses are not criminal behaviour in some legal systems, they are forms of abuse and can lead to criminal violence.

Causes of domestic violence are concerned it can be said that there are some common in all societies and some specific cause in a particular country like India. Power imbalance in society in general and in families in particular is the first reason of domestic violence. This power imbalance itself prepares the ground for violence against women and children. Secondly the traditional values and beliefs providing justification for such violence

International law has successfully recognized the varied forms and aspects of violence against women, of which domestic violence forms an important part. The term violence against women means any act of gender based violence that result in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or private life. The General Assembly Resolution adopting the Declaration on the Elimination of violence Against Women also defines violence against women in several terms as the CEDAW and the Beijing platform of Action.

It is pertinent to note that the international definition of violence focus on physical violence though psychological violence is also mentioned in the definition. Mental emotional violence and verbal taunts, economic exploitation of women, which are the forms of exploitation that women commonly face, are not specifically laid down in the international definitions. Under recently there was no definition of domestic violence in Indian law. This does not mean that acts of domestic violence were not punishable in India. Indian law recognized and punished the act of 'cruelty' under all the personal laws and the Special Marriage Act. Domestic violence is often understood to constitute such 'cruel' conduct towards the women. But in human rights women come under the category of vulnerable groups. For providing more effective measures, various steps have been taken by the Central Government and the State Government also in this field. The National Women's Commission and State Women's Commission perform more effective role in the protection of women's rights. In Domestic Violence Act also they play major rule in reducing the Domestic Violence.

#### The protection of Women from Domestic Violence Act 2005

The Act has only recently came into force on the 26<sup>th</sup> October 2006, and hence the case law and interpretation of the provisions are not available to the editors. In order to provide a remedy in the civil law for the protection of women from being victims of Domestic Violence and to prevent the occurrence of Domestic Violence Bill was introduced in the Parliament. Hence the interpretation of the provisions will have to be gender sensitive and will have to be used to protect all women who are subjected to domestic violence as defined by the act.

Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the platform for Action (1995) have acknowledged this. The United Nation Committee on convention on Elimination of all forms of Discrimination Against women (CEDAW) in its General Recommendation No. XII (1989) has recommended that the state parties should act to protect women against violence of any kinds especially that occurring within the family. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety. It is therefore proposed to enact a law keeping in view the rights guaranteed under article 14, 15 and 21 of the constitution to provide for a remedy under the civil law where it is intended to protect women from being victims of domestic violence and to prevent the occurrence of Domestic Violence in the society.

Under the Domestic Violence Act the victim of Domestic Violence has the some rights. That is right to reside in the shared household. This right also entitles her to seek restraint on other persons residing in the same house, from interfering with or disturbing peaceful enjoyment of the

house and the amenities, facilities therein, by her or her children under section 19. The right to immediate and emergency relief against Domestic Violence The assistance of a protection officer and service providers to inform her about her rights and the relief which she can get under the Act under Section 5 The assistance of Protection Officer, Service provider of the Officers in charge of the nearest police station to assist her in registering her complaint and filing an application for relief under sections 9 and 10

To receive protection for her and her children from acts of Domestic Violence under the section 18 To get medical assistance, shelter, counselling and legal aid under sections 6,7,9 and 14. Under the act Medical professional and shelters homes are under a duty to assist the women who has faced Domestic Violence, in case she approaches them. To get compensation for any physical or mental injury or any other monetary loss due to Domestic Violence under section 22

To file complaint or application for relief under the act directly to the court under section 12,18,19,20,21,22 and 23. She can 4 file a complaint under section 498-A of Indian Penal Code (IPC) simultaneously. This right has been recognized and the Domestic Violence Act.

Rights under the protection from Domestic Violence Act, 2005, it is to be noted that scope of Domestic Violence, protection order, residence order, custody order and monetary relief. First one

#### Scope of the Domestic Violence Act

The Domestic Violence Act states, that it is an act to provide more effective protections to the right of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected there with or incidental thereto. Second one

#### Protection Orders

When an application is made to the Magistrate that domestic violence has occurred or is likely to occur, then the Magistrate after hearing both the aggrieved person and the respondent and after considering the Domestic incident report, where such a report is made is prima facie satisfied that Domestic Violence has occurred or is likely to occur. Third one

#### Residence Order

The Domestic Violence Act provides the women with the right to residence in her shared household, that is where she is living regardless of whomsoever the house belongs to and prohibits the owner/legal title-holder from disposing her from the house without following due process of law. Thus the act does not create any title in the property but prohibit a women from being rendered shelter less. Hence the Right to Reside recognized and the Act is available in the situation of Domestic Violence. Forth one

#### Custody Order

The Magistrate may at any stage of hearing of the application for protection order or for any other relief under this Act, grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangement for visit of such child or children by the respondent irrespective of whether the aggrieved persons has sought custody of the child in a civil court or not. The aggrieved person can also ask for the custody to be given to any other person on her behalf. Fifth one

#### Monetary Reliefs

Section 20 of the D V Act states that while disposing of an application Under Section 12(1) of the D V Act, the Magistrate may direct the respondent to pay monetary relief 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.

### Role of Protection Officer

Protection Officer nominated by the state Government under the protection of women from Domestic Violence Act for conducting enquiries into cases of violence should play a pivotal role in resolving issues with a positive approach. Most of Indian women despite preferring complaints are not inclined to break their marital bondage. Protection Officer should exercise their responsibility carefully and arrange for additional sitting between affected persons and their spouses, observed Hemant Laxmen Gokhale, Chief Justice of the Madras High Court. The State Government has planned to nominate one protection officer for every court jurisdiction. She sought guidelines for appointment of Assistant Public Prosecutor for handling cases under these civil disputes which simultaneously involved criminal proceedings. The appointment of protection officer is State Government by notification Protection Officer in each district as it may consider necessary and shall also notify the area or areas within which a protection officer shall exercise the powers and perform the duties conferred on him by or under this act. The protection officers shall as far as possible be women and shall possess such qualifications and experience as may be prescribed. The terms and conditions of service of the protection officer and the other officers subordinate to him shall be such as may be prescribed.

### Duties and Functions of Protection Officers

1. To assist the Magistrate in the discharge of his functions under this Act.
2. To make a domestic incident report to the Magistrate in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officers in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service provider in that area.
3. To make an application in such form and in such manner as may be prescribed to the Magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order.
4. To ensure that the aggrieved person is provided legal aid under the Legal Service Authorities Act, 1987 (39 of 1987) and make available force of cost the prescribed forms in which a complaint is to be made.
5. To maintain a list of all service providers providing legal aid or counselling shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate.
6. To get the aggrieved person medically examined if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place.
7. To ensure that the order for monetary relief Under Section 20 is complied with and executed, in accordance with the procedure prescribed under the code of criminal procedure 1973: (2 of 1974).
8. The protection officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by or under this Act.

### Role of Service Providers

Production from women from Domestic Violence Act 2005 provides women multiple platform and avenues to access their right and service providers are one such forum.

Service Providers are an important component of the multi agency response mechanism setup under PWDVA. The service provider serve as a bridge between the aggrieved person and the protection officer, the court, the police and any other services an aggrieved person may need. The service providers provide the aggrieved access to specific services like and counselling, livelihood support, shelter medical facilities etc.

The main duties and functions of the Service Providers are to be record the DIR and forward a copy threat to the Magistrate and protection officers having jurisdiction in the area. Get the aggrieved medically examined and forward a copy of the medical report to the concerned protection officers and police stations. To ensure the aggrieved is provided shelter in a shelter home of required.

#### Role of Police Officer

The role of Police Officers in this process is equally important. People are not aware of protection officer. The police needs to be aware of the Domestic Violence Act, because this law has better option as compared. Under Section 5 of the Domestic Violence Act, a police officer who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall informed the aggrieved person. The police have the duty, at the same time to take appropriate action in accordance with law upon receipt of information for commission of a cognizable offence. Hence if a complaint of a cognizable offence such as dowry death, causing hurt, criminal breach of trust or cruelty to a married woman is disclosed to the police officer, he is bound to register the offence apart from fulfilling his obligations/duties under the Domestic Violence Act. The Domestic Violence Act does not override the existing criminal law and civil law remedies that victims of the domestic violence have under the law.

Thus, if the Domestic Incident Report is registered by the police officer then wherever the information provided discloses an offence under the Indian Penal Code or any other law, the police officers shall inform the aggrieved person that she can also imitate criminal proceeding by lodging a First Information Report. If the aggrieved person does not want to initiate criminal proceeding then the police officer concerned shall make a daily diary entry as per the information contained in the Domestic Incident Report with a remark that the aggrieved person due to purse the civil remedies for protection against domestic violence and has requested that on the basis of the 7 information required by her the matter has been kept pending for appropriate enquiry before registration of an FIR. Domestic violence comes to the notice of the enforcement agencies, the police and other agencies tend to be somewhat non-responsive, treating the matter as family affairs, where outsiders have no effective role to play.

- Of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensate order or more than one such order under this act.
- Of the availability of services of the Protection Officers.
- Of the availability of services of Service Provider.
- Of her right to free legal services under the Legal Services Authorities Act 1987 (39 of 1987).
- Of her right to file a complaint Under Section 498A of the Indian Penal Code(45 of 1860), wherever relevant provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

#### Role of NGO's

The Domestic Violence Act recognize the role of both the Governmental and the non-governmental sector and the steps taken by these agencies in delaying with the cases of domestic violence and seeks to empower the agencies to set into motion the legal process on behalf of the aggrieved person. In addition to the NGO's played a very important role in the protection of women from domestic violence. They organized awareness programmes, Workshop, Seminar and gave details of women improvement programmes.

Pioneered by women leaders and NGO's beginning in the 1960's and continuing in 1970's women's rights movement began to take shape. Women's rights movement in addition to condemning the social and economic structures that result in gender basis, also took the constitutional and other rights based approaches to promote its reform agenda. Women's disenfranchisement mostly begins with the lack of access to wealth, income generation, opportunities and managing house hold finance since the mid 1970's several NGO's have emerged to address this and promote economic self sufficiency for women through micro loans and other schemes.

Services provided by NGO's, as the shelter, medical assistance, Legal Aid, conciliation, counselling, financial or entrepreneurial assistance, skill training, Retrieving one's property, after living the house occupied by the abuser, an NGO's will deal with a person seeking assistance based on

- Its original Policy
- Its expertise, resources and infrastructure
- The stage of violence
- The background of the person<sup>8</sup>

Another important role of NGO's is the short stay homes, settlement, medical Assistance and counselling. Often moving from the scene of violence becomes inescapable. Therefore, for a person facing violence and a women's organisation alike knowing about short stay homes is important. These homes provide shelter, food, fee of cost for a period to women and her minor children. NGO's also provide vocational training if it is desired. Some short stay homes provides in house counselling and also aid women in approaching lawyer, police, doctor etc. Another important role of NGO's are the Medical Assistance. Medical aid is after essential in cases of where the woman reaches out for help. Doctor are often the first person to contact in cases of serious injuries due to domestic violence. NGO's also provides counselling. Counselling is a very important service that that is extended to women who face domestic violence. A woman who seeks counselling must be aware that such processes are often complex and emotionally taking as a women will have to recall all past experiences of abuse. The Domestic Violence Act recognizes the rule of both the Governmental and the non-governmental sector and the steps taken by these agencies in dealing with the cases of domestic violence and seeks to empower the agencies to set into motion the legal process on behalf of the aggrieved person.

## Conclusion

There are many constitutional and legal protection Act for the empowerment of women framed by the Government of India, but the plight of women has still not improved. Violence against women is widespread and viewed as one of the cruellest social mechanisms to suppress women unequal power relations have led to discrimination against women. The Domestic Violence Act states that it is an act to provide more effective protection to the rights of women guaranteed under the constitution who are victims of violence of any kind occurring with the family and for matters connected there with or incidental thereto. But the phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain presently, Where a women is subjected to certify by her husband or his relatives, it is an offence Under Section 498-A of the Indian Penal Code. The act also provides a pro-active role for the State Government in the prevention of domestic violence and for protection of women from violence. One is the creation of legal rights and remedies for the victims of domestic violence and the second is the creation of mechanisms. The protection of domestic violence Rules 2006 provides that its important role from Police Officer, Protection Officers and NGO's.

The role of all the agencies including the police, other Governmental and the NGO's working in this area is primarily required to understand the problem in its entire perspective and evolve

appropriate methods and strategies to help the people to overcome it. The supportive role of these agencies will develop necessary strength and power to enable. The people to fight the battle on all the fronts They are required<sup>9</sup> to play very effectively their education and organizational of role. Only legislation and law enforcement agencies cannot prevent the incident of crime against women. There is need of social awakening and change in the attitude of masses, so that due respect and equal status is given to women. Mass media can play an active role here as in the present days it has reached every corner of the nation. Various NGO's can hold a responsible position here by assigning them with the task of highlighting socio-economic causes leading to such crimes and by disseminating information about their catastrophic effect on the women hood and the society at large.

#### Note

- Short Stay Home short stays home are run by the state as well as voluntary organization. These homes provide shelter and food, free of cost for a period (usually 6 month) to a woman and her minor children. Some homes permit women to stay there until they find job for themselves and are able to provide food and shelter for the themselves.
- Legal Aid A women facing domestic violence is often not in the position to sustain herself economically. If she wants to take legal action against her abusers, she will also need a lawyer to represent her in court. Legal aid is offered by the respective States Legal Aid boards and also by private organizations.
- Prima Facie Satisfaction The satisfaction of the Magistrate has to be Prima facie, ie the evidence of a fact should be such that standing alone and unrebated, it would be sufficient to prove the same. Thus Prima facie evidence has to be sufficient evidence which standing alone would lead to a satisfaction of the existence of the proposition made. The filing of the affidavit setting out the details of the violence or its threat would constitute prima facie in applications under the DV act.

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