

India : On the Protection of Women from Domestic Violence Act

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The Domestic Violence Bill which had been pending before the Lok Sabha for many years has finally been passed this monsoon session. There have been a number of changes made to it and serious lacunae that existed at the time the NDA government drafted it have been suitably amended. Bill No. 116 of 2005 has now officially become The Protection of Women From Domestic Violence Act, 2005. While the UPA government has shown its total lack of political will and has been as impotent as the NDA in passing the 33% women's reservation bill they have been able to push through this - maybe as the lesser evil !

The new act contains five chapters and 37 sections. Its main features are 1. that the term 'domestic violence' has been made wide enough to encompass every possibility as it covers all forms of physical, sexual, verbal, emotional and economic abuse that can harm, cause injury to, endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person. (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 a woman who is the sexual partner of the male irrespective of whether she is his legal wife or not. The daughter, mother, sister, child (male or female), widowed relative, in fact, any woman residing in the household who is related in some way to the respondent, is also covered by the Act. (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.

It appears from the Act that the information regarding an act or acts of domestic violence does not necessarily have to be lodged by the aggrieved party but by « any person who has reason to believe that » such an act has been or is being committed. Which means that neighbours, social workers, relatives etc. can all take initiative on behalf of the victim (Ch.III, S4).

One great weakness of the previous 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.

S.18 of the same chapter allows the magistrate to protect the woman from acts of violence or even « acts that are likely to take place » in the future and can prohibit the respondent from dispossessing the aggrieved person or in any other manner disturbing her possessions, entering the aggrieved person's place of work or, if the aggrieved person is a child, the school. The respondent can also be restrained from attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral, written, electronic or telephonic contact" (S18d). The respondent can even be prohibited from entering the room/area/house that is allotted to her by the court.

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 and 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 make provisions for the state to provide for Protection Officers and the whole machinery by which to implement the Act.

After going through the Act with a fine-tooth comb, the only major change I would make to the Act is in S.16 of Chapter IV which allows the magistrate to hold proceedings in camera « if either party to the proceedings so desires ». Now, our experience in AIPWA has proven that sometimes in camera proceedings can protect the aggrieved woman from a lot of humiliation and shame especially in cases where explicit acts of sexual abuse and violence are being discussed in an open court and it allows for her dignity and privacy to be maintained. BUT, we have also seen trials where the in camera proceedings only intimidated the aggrieved in favour of the respondent. This is especially so when the aggrieved is the only woman in court facing a completely male phalanx of hostile, sneering magistrates, lawyers, officials, police, male respondent etc. The solution is to change this section to only allow for in camera proceedings NOT when EITHER party so desires but only if the aggrieved party so desires. Also, the aggrieved party should be allowed to be accompanied by any relative/woman social worker etc. of her choice for moral support.

Misuse of the act, like all such acts in India , cannot be ruled out. In fact, with a system as corrupt as ours, money, clout and muscle power will always call the shots. And 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.(4) . But when one sees the dismal record of implementation of Acts related to giving relief to the oppressed, one cannot but be sceptical. For instance, the Rape Act brings only 5% of all rapes committed to court and of those only 5% get convictions !

The main beneficiaries of the Act will, of course, be women of the propertied upper classes. But there is no doubt that with this Act a whole Pandora's Box of litigation will be thrown open and all the degradation, brutality and cruelty to women that has been carefully swept under the carpet for centuries in our 'old, rich heritage and civilisation' is all going to be exposed - and about time ! For those feminist groups that see the family or the male as the main cause for women's oppression, this Act will open up all sorts of possibilities in their struggles.

But for the revolutionary left organisations that see the present system as the cause for women's oppression, these Acts are no solution to the basic problems that women face and are, at best, mere stop-gap measures. The underlying reasons for the violence against women which are her enslavement under the present system ; the double-standards and hypocrisy of monogamy ; the fact that she has been effectively 'privatised' for centuries, removed from public production, public

decision-making and interaction ; has no economic independence, is relegated to domestic drudgery and is virtually the personal property of her husband/in-laws is not remotely understood or tackled. It is like giving a prisoner certain rights to resist torture and abuse but doing nothing for releasing him from his shackles ! (1)

The capitalist system whereby women, especially poor working women are doubly enslaved, cannot offer any long-term solution for the emancipation of women or their freedom from violence. It is only socialism that can truly emancipate women by not only making her equal under law and giving her every legal protection but, far more important, reversing the injustices of the past thousands of years by socialising the means of production, bringing the woman back into social production and decision-making, freeing her of her domestic enslavement by the state taking responsibility through crèches, community kitchens, old-peoples' homes etc. It is only a new socialist system that will free both the man and the woman, make them truly equal partners - economically, socially and politically - so that they can enter into a genuine partnership and thus evolve the new type of family where neither will be victim nor villain.

Am I against the Act ? No, not at all. But its limitations must be kept in mind. Within the existing unjust and unequal bourgeois system here is an act of legislature that gives oppressed women some respite, but a very temporary one as it will not end the hypocrisy of bourgeois monogamy. Hopefully, the contradictions will be so heightened that society will have to go in for more long-lasting solutions. 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 » (2)

Further Reading :

1. 'Origin of Family, Private Property and State' by F. Engels
2. 'The Gotha Programme' by Karl Marx
3. « Home is where the Law is » by Indira Jaisingh, Indian Express, 8 Sept. ;05.
4. « Reflections on Domestic Violence » by Flavia Agnes, Asian Age, 6 Sept. 05

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* From Liberation, CPIML Monthly, october 2005.