

Well Intentioned but Over Ambitious

A Review of the New Domestic Violence Act

Author(s) : Madhu Purnima Kishwar



The new Domestic Violence Act (DVA) has made some significant improvements over the existing laws but it is not as if prior to this Act civil laws did not exist to protect women's rights in the family. Astute and determined lawyers have successfully pleaded and got adequate relief for their female clients under the existing matrimonial, civil and criminal laws as the article by Flavia Agnes demonstrates. But, the tardiness of court procedures and judicial bias often resulted in miscarriage of justice.

The biggest shortcoming of this Act is its overweening ambition and lack of sense of proportion. Ordinarily, when handling such deep rooted problems sincere regimes start their interventions with more focused and manageable victimised groups; they set themselves modest goals for dealing with blatant and clear cut cases of abuse and bring those worst offenders to swift justice. For example, they target their laws and welfare measures at those women who have suffered severe physical injuries in their homes and are commonly recognised in their communities as abused wives.

But what the framers of this Act have done is to anticipate all possible ways that the law could protect all aggrieved females from any and all sorts of harm and humiliation. At the same time they have put all their faith in all women being essentially good and honest victims while they view the government and the NGO networks as being capable of righting all kinds of wrongs, and in using all the claims of all women to get them justice, without worrying about proof of claims, or the current state of the society and of the government machinery. It is as if the framers of this law live in a Dreamland where wishful thinking is all that is needed to protect women from all kinds of real and imagined harm. In the process we are likely to see this law make a mockery of itself.

The Positive Aspects

A major plus point of this Act is that it acknowledges domestic violence as a problem in itself rather than keeping it forcibly tied to the pallu of anti dowry laws. The previous law carried an absurd assumption that domestic violence was invariably linked to dowry demands and hence a new and exotic variety of crime called "dowry death" was added to the statute book. Consequently, lawyers, police, and even some women's organizations encouraged women to register violence cases under the Anti Dowry Act even when there was no basis to the allegations of dowry demands because they felt stringent provisions of the anti dowry law made it easier for them to press charges and get a sympathetic hearing. Thus our courts came to be filled with cases with exaggerated or patently false charges of dowry demand related cruelty, while other dimensions of cruelty got pushed under the carpet. This new law frees women from the need to make bogus dowry related charges in order for their abuse to be taken seriously. This may enable us to know the real face of domestic violence in India and dispel the simplistic notion that dowry is the sole or main cause of violence against women.

The DVA provides for comprehensive and speedy relief within a set time frame. (See box on page 17) So far the remedies available to a victim of domestic violence in the civil courts and criminal courts vide Section 498A of the Indian Penal Code (IPC) were limited. They could file for divorce under civil law and or get the abusive spouse arrested and tried for cruelty under Section 498A of the Indian Penal Code.

Thus the earlier laws hinged mainly on threatening the use of penal provisions to get the accused arrested and jailed on registration of a complaint in order to negotiate relief with an allegedly abusive spouse. Many women learnt to use the law to arm-twist their husbands to agree to financial settlements before divorce. The new Act moves in the direction of providing positive protection of women's civil and matrimonial rights, without using the threat of

imprisonment under criminal laws as the first step towards seeking redress, as was the case with Section 498A. Under this law, imprisonment comes as a second stage remedy.

Earlier, victimised women found it hard to get emergency relief unless a very determined lawyer was willing to walk the extra mile and use the skillful techniques described by Flavia Agnes in her article in this issue. But even in those cases they had to combine legal means with extra-legal ones. Since court proceedings are invariably protracted, the victim had to often live at the mercy of the abuser or walk out of the house.

This article has been taken from the website of Manushi (a forum for women's rights and democratic reforms):

<http://www.manushi.in/articles.php?articleId=141&ptype=campaigns#.WIHr6rZ940o>