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Misuse of Domestic Violence Law by Women: Criticle Analysis

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Abstract-- The Protection of Women from Domestic violence Act 2005 is a very old law which provides protection to a woman from his husband. The practice of this law has been questioned various time in the court of law, as this includes the relationship of husband and wife and their religious sentiments, in this paper the author has tried to figure out the facts that this law is biased and only favour to women thus leaving no scope for the husband to take any remedies provided to women in the Act. The background situation of women was weak as they do not understand the law and has less access to the courts. This is the 21st century where we are providing equal opportunities to women as like to men but here in this act there is no equality provided to men. The framework of this act provides explicit power to women to bring a case against his husband for domestic violence, cruelty. The researcher has analysed various reports and research which provides that not only women but men to are the victims of insult, cruelty, exploitation. This act is more a threat to men and used as a terrorism by women. The author brings the views of various researcher, scholars that have intended this Acts provision are venerable to misuse the law.

Keywords-- domestic, equality, protection, exploitation, venerable

I. INTRODUCTION

The domestic violence act formed in 2005 is for the protection to women who are part of cruelty, harassment, or insult by their husband. The definition of domestic violence is given under Section 3 of the act, and in that the term 'aggrieved person' only includes women,ⁱ which means that only men will be prosecuted under this act and women cannot be prosecuted. We can clearly state that by reading this act that men are the perpetrators of domestic violence and will consider only women as victims. This law was framed at the time when women does not have knowledge about their rights and duties and were downtrodden and not treated well by their husband the male person were more dominated towards their wife. Consider the evolution of the society in respect of technologies, equal opportunities, jobs and many more the development have brought the change and now we are providing equal opportunities to women and creating a mark of shoulder-to-shoulder stand of women with men in every aspect of life. The laws are amending by the change in the society and requirements of the society; therefore, the law has the ability to form in the way it can be used effectively and does not discriminate when there no intelligent mind provided. The domestic violence act does not leave any scope of defence for the man.

The present scenario where men are also been victim of violence, insult and harassment but they are not protected under the same act. On the other hand, this domestic violence act is sensitive like in the way "If any women feels that she has been insulted and the word has relative term which is totally on the discretion of the women that she is been insulted or will say that she is been insulted, the men does not have any legal resource under this act to protect himself or his reputation. That is to when it is consider that it was a false case the women cannot be prosecuted. There are many flaws and fundamental problems with the laws of the act, as it provides undue advantage to the women and they use this law as a weapon more than the protection by giving threat, and exploit them using it just like a terrorism, the definition of domestic violence act is too expandable and is misused by the women for the minor conflict between the partner also just to extract money from husband where the power is totally in hand of women and men left out with no remedy this make us understand that is act is gender biased and favor women. 'The consequences is that in the current society the law is inadequate to tackle the domestic violence and does not provide rights to men rather burdening then with lots of responsibilities moreover it does not complete the purpose of which it was made for, it should be neutral for and should protect genuine victims of domestic violence and provisions for the stringent punishment should be incorporated so that the law can be protected from the misuse'. The main aim should make laws which are equal for both men and women thus does not provide fear to innocent men and power to exploit should not provide to the other gender. The act was made by the provision of Article 15(3) of the constitution of India which states that "nothing this article shall prevent the State from making any special provision for women and children"ⁱⁱ the law provided for the protection for women form domestic violence, that is now been misused by the women in treating innocent men in the fear of terrorism. Section 498A of Indian Penal code states "whoever, being the husband or the relative of the husband of a woman, subject such women to cruelty shall be punished with imprisonment for a term which may extent to three years and shall also be liable for fine."ⁱⁱⁱ This section was also very much misused by the woman. This research has given effort to identify the various problem and find out the legislature conduct which is misuse of this law by the woman and should have some prevention that help innocent man to not being abused by this act and not provide explicit power to woman.



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II. DOMESTIC VIOLENCE ACT (IMPACT EARLIER AND IN PRESENT)

The act was basically framed in 2005 by the legislature for the protection of woman and giving them the life to live with dignity. Major effects of this law is for the married woman who are the part of cruelty, insult and harassment by the husband or by his family member, this act was made because in the earlier time the knowledge of the law and access to court for woman was not easy and husband don't treat their wife well and are much dominating thereby the cases for dowry death was much concern at that time. The definition of the 'domestic violence' not only includes physical abuse or sexual abuse but also include verbal and emotional abuse, this is not only for the protection for the wife but also protect the household woman, such as mother, sister or widow who can be abuse with under the act therefore this act includes any kind of threat for abuse and harassment for the demand of the dowry. The women were not given suitable preference and laws were needed to protect them and provide them a space of secure environment so that they can bring themselves upwards and stand with the equal criteria and opportunities like men. The situation was quite different earlier, if we see the implication of this law, we will find that the law much misused than what it was actually made for the prevent of domestic violence this law provides and undue advantage to women and this is used by them as a weapon against the men by which woman extort and threaten men. When we check the NCRB report of 2020 it was present that in total of 111,549 cases that have been registered 5,520 cases were closed by police itself as they were false in nature and 16,151 case have been closed as they are false, or they were mistake of facts and law.^{iv} It is clearly visible that the reason for which the act was framed is deviating from its point and have taken a different role in the society that is more likely became a threat to the men any law which is bringing the chance of punishing an innocent cannot be taken so lightly there have to be some prevent made for not allowing this law to be misused. The section 498A of IPC was also being misused in the factor of domestic violence. In the case of *Shushil Kumar Sharma v. Union of India* Supreme court held that section 498A of IPC is not unconstitutional and ultra virus, the object of this provision is prevention from dowry but there have been many instances came where the complaint are not bonafide and filed with another motive, the question is what is now the remedies that can be taken to prevent abuse of well-intentioned provision, and the provision is constitutional does give the liberty to misuse and convert it to unleash harassment, the legislature need to make out the way to deal with the issue of false complain, till then the court have taken measure to dealt with this.^v

Therefore, in the case of *Bhaskar Lal Sharma and Anr. v. Monica* the supreme court in this case has observed that the elements that are required by section 489A of the IPC was not fulfilled in this case the court has the view that the intention was merely such that it will come under the cruelty under this provision, therefore no case can be made out against the husband and his family.^{vi} The present society has been evolved a lot and we need such laws that does not violate any right and give equal protection to each gender.

III. MISUSE OF THE ACT AND GENDER BIASNESS

The protection to women has always been an integral part of the society and many laws have been made that are protecting women and giving them secure life to live with dignity, but the laws are for the protection not for using them as a weapon against the opposite gender. The law itself include aggrieved person that is only women so this is very clear that the act is for woman and man is not included in it this created burden on the men to be more sincere with their actions and vocals, but the thing is in the present century the victim of harassment and cruelty are not only women but men too but as said earlier the law only protect women and not men then what about them who are being exploited by their wife and could have any remedy to get protection for the same act. This law is gender bias and does not leave any scope of protection to the men they cannot claim the same protection as women. This is totally a serious concern for the makers because we talk about equality but not providing when it comes in the practical sector thus, the law which was made for the protection of the women should have such prevention that women could not think to misuse it and do not file false complain. Somewhere or the other when the woman making any false complain the innocent man has to suffer his reputation and time both has been affected. There have been many laws that have been used by women as a weapon of threat like section 498A of the IPC that was also been called a terrorism by the women because this provision has provided criminal punishment for the man. This law was used by women for blackmail demanding for the money. There are cases that have been falsely framed by the wife for small causes and for the extortion of money. Like in the case of *Manoj Singh Anr. v. Sarabjit Kaur* in this the High Court of Punjab held that 'Protection of women from the domestic violence act have been misused by the wife to threat spouse and his family. The state has to take such measure that the purpose of the act should be fulfilled and does not attack the other gender without providing the remedial law.'^{vii} In the case of *Preeti Gupta v. State of Jharkhand*, it was observed by the Supreme Court that the legislature needs to have a relook to the provision, and the knowledge which was reflected to be exaggerated in versions of the incident in numerous cases.^{viii}



IV. ANALYSED THE CASES

In the case of *Balwinder Singh v. Richa Sharma*, it was held that in the view of the protection of women in the domestic violence act is having flaws that entice women to misuse this law and mental fear to the man for being prosecuted with any qualified reason.^{ix} In the case of *Bibi Parwana Khatoon @ Parwana Khatoon v. State of Bihar*, the Court in this case had set aside the order of conviction of the lower court and observe that the evidence is not able to prove the intention beyond reasonable doubt and there is no common intention that can be admit for crime.^x

In the case of *Manju Ram Kalita v. State of Assam*, in this case the court held and observe that the meaning of 'cruelty' has a difference in every statutory provision and should be established in the context of section 498A of IPC. It was stated that the women who has been the victim of cruelty should be subject to continues and in the close proximity of time when the complain was filed. Therefore, petty quarrel will not come in the part of cruelty and thus the court set aside the order passed under section 498A of IPC.^{xi}

In the case of *Narendra v. K Meena*, the spouse want to spend his husbands income herself and also want that he should be living separately from his parents, and alleged that he is having extra marital affair with the maid and filed a false complain against him, with that she tried to commit suicide and threat his husband, the court in this matter observe that if the wife has entangled his husband in the clutch of law it connects to the mental cruelty to husband, and their by this could be ground of divorce, thus the court quashed the complaint.^{xii}

V. CONCLUSION AND SUGGESTION

The Protection of Women from Domestic Violence Act has been formed when the legislature was in the picture that it the patriarchal society we need to secure the rights of women and giving them the life to live with dignity and this brings the protection to the women from the act of cruelty and harassment from the spouse which happens in the house of four wall, the action taken and the law formed was made in the calculation of the earlier period but as we entered the 21st century the objective is not been fulfilled we know very much from the report of NCRB and media

coverage that law which were made merely for the protection is used as a terror just like Section 498A of the IPC, the court marked it as "Legal terrorism" because it was misused a lot, the same facts have been seen with the formation of "Domestic Violence Act" various false cases have been filed by the spouse just for extraction of money from the husband and also threat them. Therefore, this act is gender bias as it is purely burdening on the man that they must be feared by the wife and even for petty quarrel they have to suffer as the act include insult.

Therefore, the legislature has to relook to this act and include provisions that need to be implement in the current scenario. The act should be made gender neutral that it should include men/women both and wife/husband so that equal punishment can be provided as not only women, but men also are the part of cruelty and harassment. The law implication of the law should be in such nature that it provides punishment to the false person and protect the genuine victim and do not prosecute any innocent person. The cause of Domestic Violence act is that even the old parent, sister relatives are prosecuted do not get bail it should be made toailable so that innocent should not suffer. With the well respect for law, it was for benefit but if the innocent has the fear of punishment under the provisions of the act, then it become more a terrorism. Therefore, if the prosecuted person found to be innocent, he should have the right to protect himself and complain against the other spouse.

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ⁱThe Protection of Women from Domestic Violence Act, 2005, S. 3, Acts of Parliament, 2005 (India).

ⁱⁱ INDIA CONST. art. 15, cl.3.

ⁱⁱⁱ The Indian Penal Code, 1860, No. 45, S. 498-A.

^{iv} Deepika Narayan Bhardwaj, *NCRB Report 2020/Crime Against Women/Cases Registered V/s False; Conviction Vs Acquittal*, VOICE FOR MEN INDIA (2021), <https://voiceformenindia.com/ncrb-report-2020-crimes-against->



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^vShushil Kumar Sharma v. Union of India, (2005) 6 SCC 281.

^{vi} Bhaskar Lal Sharma and Anr. v. Monica, (2014) 3 SCC 383.

^{vii} Manoj Singh Anr. v. Sarabjit Kaur, AIR 2018.

^{viii} Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 3363.

^{ix} Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 3363.

^x Bibi Parwana Khatoon @ Parwana Khatoon v. State of Bihar (2017) 6 SCC 792.

^{xi} Manju Ram Kalita v. State of Assam (2009) 13 SCC 330.

^{xii} Narendra v. K Meena (2016) 9 SCC 455.