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## EDIT-OPINION

### A new net, but full of loopholes

*The new Domestic Violence Act leaves scope for harassment*

**Madhu Purnima Kishwar**

While the new Domestic Violence Act (DVA) has made improvements over existing laws, its greatest shortcomings are its overweening ambition and a lack of proportion. In attempting to anticipate all possible ways to protect all aggrieved women from any sort of harm, the framers of the law have put their faith in all women being essentially honest victims, without worrying about proof of claims. In the process we are likely to see this law make a mockery of itself.

A major plus point of the Act is that it acknowledges domestic violence as a problem in itself instead of one forcibly tied to anti-dowry laws. It frees women from having to make bogus dowry charges for their abuse to be taken seriously. Earlier laws also hinged on the threat of penal provisions, such as provided under Section 498A of the Indian Penal Code, to negotiate relief with an allegedly abusive spouse. The new Act moves towards providing positive protection of women's civil and matrimonial rights, with the threat of imprisonment coming only as a second stage remedy.

Another positive aspect of the new DVA is that instead of assuming, as previous laws did, that women are abused only as wives and daughters-in-law, the new Act takes a more balanced view of domestic abuse by including daughters, sisters, mothers, mothers-in-law, sisters-in-law and even grandmothers in its purview. Section 2(a) enables a woman to seek protection against any adult male relation, including her father, brother, husband or male partner, as well as his male and female relatives. However, this opens the possibility of some very conflicting situations. What if a woman alleges abuse by her daughter-in-law who in turn seeks an injunction against the former? Given that battles between women in the family tend to be no less ferocious than those between spouses, this is not an unlikely scenario.

This law considers physical, sexual, emotional, verbal, psychological, and economic abuse or threats of violence and abuse as equally serious offences. The court may conclude that an offence has been committed by the accused upon the sole testimony of the woman alleging abuse. Given that lying in court has never been taken seriously enough to invoke punishment, laws which presume guilt even before the trial has begun are prone to great misuse.

The most important new element is that it offers the same protection to women in live-in relationships on par with marriage. It also protects women in fraudulent or bigamous marriages, holding out the possibility of relief for women duped into cohabitation and then dumped on the grounds that there was no valid marriage. But the Act has cast its net so wide that it leaves enormous scope for harassment and blackmail. It does not specify how long a couple has to have lived in a shared household. Thus, a woman who lives with a man for two or three months without being married to him can at any point seek relief at par with his wife. This amounts to a mockery of laws against bigamy. The habitation rights of live-in partners cannot be protected in this way without serious damage to the rights of married women and their children.

The new law also recognises the role of voluntary organisations in addressing domestic violence

and enables NGOs to register as service providers. The service providers will, among other things, have to record the Domestic Incident Report, arrange for medical examination of the complainant, ensure that she is housed in a shelter home, if she so requires. How many NGOs even in metropolises, leave alone villages, have the resources to provide such services? Genuine shelter homes do not even exist in most cities. The few government-run homes that exist are often dens of corruption. Also there is no provision for reimbursing NGOs. Thus the responsibility for making this law work has been put on non-existent machinery. At the rate at which bogus NGOs have come up, it is not unreasonable to fear that goons will manage to register themselves as service providers much faster than genuine NGOs.

In India we have not learnt to craft our laws judiciously because we have no experience of their honest implementation. And yet every time a law shows signs of dismal failure, the government responds by passing another new law or amendment and then pretending it has handed over a new magic wand for empowerment. In the process, the government makes a mockery of its own intentions as well as its ability to deliver justice.

*Kishwar is editor, Manushi*

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