

Object and Reasons of Domestic Violence Act

Geetika Sood¹, Avrida Jan²

¹HOD UILS, ²Research Scholar

^{1,2}Chandigarh University, Mohali, Punjab, India



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Every Act of the Parliament commences with a preamble which consists of the introductory words "An Act to....." followed by words briefly describing its objects. The preamble of a statute may be relied upon as aid to the understanding of the meaning thereof or for determining general object and intention of the Parliament in passing the enactment, but the preamble cannot control the express clear language and sweep of the operating provisions of such an instrument.¹When the language, object and the scope of the Act are not open to doubt, the enacting part cannot be restricted, extended or modified, by reference either to the title or preamble.² Preamble is evidence of thought process of representatives.³ The practice of inserting elaborate preambles in Acts of the parliament has not disappeared and it is now regarded as well settled law that a preamble neither cuts down nor restricts, nor extends, nor enlarges the enacting part, when the language, scope and objf such part are clear and unambiguous.⁴According to the preamble, this is an act to provide for more effective protection of the rights of women.

1. Guaranteed under the Constitution;
2. Who are victims of violence of any kind occurring within the family; and
3. For matters connected therewith or incidental thereto.

I. **Effective protection of the rights of women guaranteed under the Constitution:**

The Constitution gave protection to women under articles 14, 15(3), 16(2), 21 and 23 of the Constitution and the Supreme Court has issued guidelines and directions for the protection of women.

1M/s. Phoenix Impex v State of Rajasthan and others, 1998 C.T.J. 151, RLW 1997 (3) Raj. 2096

2 Attorney General v. H.R.H. Prince Erncst Augustus Hanover, (1957) AC 436, 467-68; Abdulla Khan v. Bchram Khan, AIR (1935) Pesh 69

3 State of Cuiarat v. MirzapurMotiKurschiKassabJamat, (2005) 8 sec 534, decided by seven Judge Bench - A.K. Mathur J. dissented

4Shidvirappav. Shivalingappa (1951) 53 Born L.R. 539; Sardha Ram BholaNath v. Paras Ram Manoharlal. AIR (1962)Punj. 147

Article 14 is general and most is read with the other provisions, which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two articles i.e. Articles 14 & 15 read together validate section 497 of the Indian Penal Code.⁵ Under section 497 of IPC the offence of adultery can only be committed by a man. The last sentence in section 497 IPC prohibits this. It runs - "In such case the wife shall not be punishable as an abettor." Women are nearly half the India's population and denial of gender equality is the worst kind of discrimination to the majority. It is often overlooked that in addition to women being half the population, the children who constitute a I significant segment, nearly half of the remaining population, also suffer on account of gender bias and continuing gender inequality. About five hundred thousand women die every year during pregnancy and due to preventable complications relating to childbirth. All these issues are related to the demand of gender equality and non-discrimination. The so-called 'missing women' are about four million in India. The Kerala example has shown that education of the girl child has the positive effect even of improving the sex ratio,- which is 1.06 as compared to the national average of 0.93 in addition to a much lower fertility rate as compared to the rest of the country. Thus, promotion of gender justice must be essential components of all development projects to make it a tool of the progress and sustainable development.

Article 15 of the Constitution has Prohibited discrimination on grounds of religion, race, caste, sex or place of birth. Clause (3) of Art. 15 has said that "nothing in this article shall prevent the State from making any special provision for women and children". Article 15 (1) says that "The State shall not discriminate against any citizen on grounds only ofsex.

⁵Yusuf AbdulAziz v. State of Bom.&Husseinbhoj Laljec,1954 SCR 930 :AIR 1954 SC 321:Pcr Bose J.

The Protection of women from Domestic violence Act, 2005 is a Special law to protect a women who is subjected to cruelty by her husband or his relatives. Although such act is an offence under section 498 "A of the Indian Penal Code, but the civil law does not, however, address this phenomenon in its entirety. The Parliament has, therefore, enacted this special Act keeping in view the rights guaranteed to women under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. Art. 23 of the Constitution has prohibited traffic in human beings and forced labour. It has laid down in clause (1) that "traffic in human being and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. In compliance to this constitutional mandate, the Parliament has enacted the Immoral Traffic (Prevention) Act; 1956. Before 26th January" 1987, the name of this Act was "the Suppression of Immoral Traffic in Women and Girls Act, 1956".

In *Vishal Jeet v. Union of India and Others*,⁶ the Supreme Court said that any contravention of Art. 23(1) shall be an offence punishable in accordance with law. The expression "traffic in human beings" is evidently a very wide expression including the prohibition of traffic in women for immoral or other purposes. Art. 35(a)(ii) of the Constitution read that notwithstanding anything in this Constitution, Parliament shall have land the legislature of a State shall not have, power to make laws for prescribing punishment for those acts which are declared to be offences under this part. The power of legislation, under this article, is given to the parliament exclusively, for, otherwise the laws relating to fundamental rights would not have been uniform throughout the country. The power is specifically denied to the State Legislatures. The Immoral Traffic (prevention) Act, 1956 has provided punishment for traffic in human beings. It would include traffic in women and children for immoral or other purposes.⁷ Article 39(e) provides that the State should, in particular, direct its policy towards securing that the tender age of children are not abused. One of the objectives under cl. (f) is that the State should, in particular, direct its policy towards securing that childhood and youth are protected against exploitation and against moral and material abandonment. There are provisions in Penal Code and under Juvenile justice Act, which are meant for protection of children. In spite of these stringent and rehabilitative provisions of law under various Acts, it cannot be said that the desired result has been achieved. It cannot be gain said that a remarkable degree of ignorance or callousness or culpable in difference is manifested in uprooting this cancerous growth despite the fact that the day has arrived imperiously demanding an objective multidimensional study and a searching investigation into the matter relating to the causes and effects of this evil and requiring most rational measures to weed out the vices of illicit trafficking. This malady is not only a social but also a socio-economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive.

6 AIR 1990 SC 1413

7 Earlier known as the Suppression of hrunoral Traffic in Women and Girls Ad, 1956; See Gaurav Nain v. Union of India, AIR 1997 SC 3021 .

II. Effective protection of the rights of women who are victims of violence of any kind occurring within the family :

The sexual harassment of a female in the family is incompatible with the dignity and honour of a female and needs to be eliminated. It is a form of sex discrimination projected through unwelcome sexual advances, requests for sexual favours or such other verbal or physical conduct and rejection/ submission of which affects her enjoyment of life or has the effect of creating an intimidating or hostile environment in the family. Such incidents violate their fundamental rights to gender equality and right to life and liberty. India was a party to many international conventions on the subject. The Convention on the Elimination of all forms of Discrimination against Women, 1979, and the Beijing Declaration on Women directs all State parties to take appropriate measures to protect the honour and dignity of women and the International Covenant on Economic, Social and Cultural Rights. The Supreme Court observed. that the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned, more so, when there is no inconsistency between them and there is a void in domestic law.⁸ Gender discrimination commences prior to child birth in the form, of female foeticide. It continues as infanticide, malnutrition, lack of health care, lack of facilities for education, discrimination within the family, denial of participation in policy and decision making the family. There are many more facets of gender inequalities.

III. Effective protection of the rights of women in matters connected therewith or incidental there to:

The following rights of women are connected or incidental to the rights of women who are victims of violence of any kind occurring within the family:

- A. Violation of Human rights of women;
- B. Prevention of sexual exploitation of flesh trade in family;

a. Violation of Human rights of women:

Section 2(b) of the Protection of Human Rights Act, 1993 says that 'human rights' means the right relating to life, liberty, equality and dignity of the individual guaranteed by the constitution, embodied in the international Conventions and enforceable by the Courts in India." In other words the violations of the following rights of Women shall come in the category of "violation of Human Rights" :-

1. Right relating to life;
2. Rights relating to liberty;
3. Rights relating to equality;
4. Rights relating to dignity of the individual.

All the above rights have been guaranteed by the Constitution and are embodied in the International Conventions. They are also enforceable by the Supreme Court, High Courts and all other subordinate courts.

Commenting upon the above definition, the Supreme Court has observed in *MadhuKishwar v. State of Bihar*,⁹ as under:

8 Apparel Export Promotion Council v. A.K. Chopra~ (1999)1 &::C 759_,AIR 1999 SC 625

9AIR 1996 SC 1864 : (1996) 5 sec 125; Chairman, Rly Board v. Lhandrima Das, AIR 2000 SC 988 : (2002) 2 sec 465

“Thereby the principle embodied in CEDAW and the concomitant Right to Development becomes integral parts of the Indian Constitution and the Human Rights Act became enforceable. Section 12 of the Protection of Human Rights Act charges the Commission, with duty for proper implementation as well as prevention of violation of the human rights and fundamental freedoms.”

The said convention known as CEDAW (Vienna Convention on the Elimination of Discrimination against Women) was ratified by the UNO on December 18, 1979. The Government of India ratified it on June 19, 1993 and acceded to it on August 8, 1993. The Government however made some reservations on Articles 5(e), 16(1), 16(2) and 29 of the Convention, which condemns discrimination against women in all its forms. The National Human Rights Commission has been given powers to implement the said Act by making inquiries, reporting the matter to the Central or State Governments and filing complaint in the court of law. If any violation of human rights comes to the notice of the Commission, it can act *sue motu* without waiting for any formal application. Art. 21 not only protect life and liberty, but also envisage a fair procedure.

In **Vikram Deo Singh Tomar v. State of Bihar**,¹⁰ the Supreme Court said that the Constitution lays special emphasis on the protection and well being of the weaker sections of society and seeks to improve their economic and social status on the basis of constitutional guarantees spelled out in its provisions. It shows a particular regard for women and children, and notwithstanding the pervasive ethos of the doctrine equality it contemplates special provision being made for them by law. Where an acid was thrown on the student of University, the High Court treated letter and petition of students as PIL and awarded compensation of Rs. 5 lakhs, plastic surgery of victim at expense of State, facilitation of her further studies and employment and appointment of special prosecutor to prosecute the acid-thrower. The Supreme Court has declined to interfere in such matter.¹¹

b. Prevention of sexual exploitation of flesh trade in family:

1. In **Vishal Jeet v. Union of India and Others**,¹² the petitioner advocate sought, certain directions, directing the Central Bureau of Investigation (1) to institute an enquiry against those police officers under whose jurisdiction Red Light areas as well Devadasi and loggin traditions are flourishing in the family and to take necessary action against such erring police officers and law breakers;
2. to bring all the inmates of the red light areas and also those who are engaged in "flesh trade" to protective homes of the respective States and to provide them with proper medical aid, shelter, education and training in various disciplines of life so as to enable them to choose a more dignified way of life and
3. to bring the children of those prostitutes and other children found begging in streets and also the girls or daughters pushed into "flesh trade" to protective homes and then to rehabilitate them. The Supreme Court held

that it was neither practicable and possible nor desirable to make a roving enquiry through the CBI throughout the length and breadth of this country and no useful purpose will be served by issuing any such direction, as requested by the petitioner. Further, this malignity cannot be eradicated either by banishing, branding, scourging or inflicting severe punishment on these helpless and hapless victims most of whom are unwilling participants and involuntary victims of compelled circumstances and who, finding no way to escape, are weeping or wailing throughout. However, it would be appropriate if certain directions are given in this regard to State Governments and Union Territories.

The Supreme Court gave the following directions:

1. All the State Governments and the Governments of Union Territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference.
2. The State Governments and the Governments of Union Territories should set up a separate Advisory Committee within their respective zones consisting of the Secretary of the Social Welfare Department or Board, the Secretary of the Law Department, sociologists, criminologist members of the women's organizations, members of Indian Council of Child Welfare and Indian Council of Social Welfare as well the members of various voluntary social organisations and associations etc., the main objects of the Advisory Committee being to make suggestions of:
 - A. The measures to be taken in eradicating the: child prostitution, and
 - B. The social welfare programmers to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.
3. All the State Governments and the Governments of Union Territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.
4. The Union Government should set up a committee of its own in the line, we have suggested under direction no. (2) the main object of which is to evolve welfare programmers to be implemented on the national level for the -care, protection, rehabilitation etc. of the young fallen victims namely the children and girls and to make suggestions of amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children.
5. The Central Government and the Governments of States and Union Territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees.
6. The Advisory Committee can also go deep into Devadasi system & loggin tradition and give their valuable advice and suggestions as to what best the Government could do in that regard.

10AIR 1988 SC 1782

11Hate Crimes, Chief Seey v. Students of A.P .A. University, (2005) 12 sec 448

12AIR 1990 SC 1413

The Supreme Court has power to issue directions, guidelines to fill the void in the absence of suitable legislation to cover the field;¹³ and there is mandate to all authorities to act in aid of the orders of the Supreme Court as provided in Article 144 of the Constitution. A brief reference to a few of the guidelines is sufficient:

1. Guidelines for adoption of minor children by foreigners,¹⁴
2. Guidelines to eradicate the child prostitution, devadasi system and jogin tradition.¹⁵

In *Gaurav Jain v. Union of India and Others*,^{16a} a question arose whether it was advisable to allow separate schools and hostels for the children born to prostitutes. It was held that such a prayer could not be accepted. Segregating prostitutes' children by locating separate schools and providing separate hostels, would not be in the interest of such children. This is particularly so for young girls whose body and mind is likely to be abused with growing age for being admitted into the profession of their mothers. While the plea for separate hostels for prostitutes' children cannot be accepted it is necessary that accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified. Legislation has been brought to control prostitution. Prostitution has, however, been on the increase and what was once restricted to certain areas of human habitation has now spread into several localities.

We live in an age, which recognizes that every person is entitled to a quality of life consistent with his human personality. The dignity of individual requires that the women and children must be given at least minimum conditions of living in family and in Government Home. In *UpendraBax; v. State of U.P.*,¹⁷ the Supreme Court gave directions to the State seeking improvement of the living conditions in the Government Protective homes at Agra. The right to live with human dignity is the fundamental right of every Indian citizen. Life or personal liberty includes a right to live with human dignity.¹⁸ And, so, in the discharge of its responsibilities to the people, the State recognises the need for maintaining establishments for the care of those unfortunates, both women and children, who are the castaways of an imperfect social order "and for whom, therefore, of necessity provision must be made for their protection and welfare. Rescue and rehabilitation of trafficking victims control and supervision of protective homes is necessary and for that living conditions and finances be provided and the schemes be formulated by the HRD Ministry.¹⁹ Both common humanity and considerations of law and order require the State to maintain dignity of

individual. To abide by the constitutional standards recognised by well accepted principle, it is incumbent upon the State when assigning women and children to the "Care Homes" to provide at least the minimum conditions ensuring human dignity. Describing the Care Home, Patna as a crowded hovel, the Supreme Court directed the State of Bihar to take immediate steps to comply with the various directions given by the Court for the welfare of the inmates of the care home.

Rape also violates right to life:

Rape by a member of the family is not only a crime against the person of a woman (victim), it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crises. It is only by her sheer will power that she rehabilitates herself in the family or society, which, on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21.²⁰ Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in family. Compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shocks as well as loss of earnings due to pregnancy and the expenses of the child if this occurred as a result of the rape.

In *Sudeshjale case*, a question arose about the married woman's right to personal liberty. The petitioner expressed her desire to go with her parents instead of with her husband. Later after disposal of the said petition, she again wrote letter to Chief Justice of India expressing her desire to be with her husband and cited family circumstances as, impediment. The court directed that she might be produced alone, not accompanied by her parents or husband, so that the Court could find out what she really wanted, without duress. The petitioner on meeting court in chambers expressed her desire to live with her husband and expressed apprehension in regard to her and her husband's safety. Ultimately the Supreme Court allowed the petitioner to go with her husband and directed police to give special attention to the safety of the couple.²¹

¹³Union of India v. Association for Democratic reforms, (2002) 5 sec 294 (309)

¹⁴Lakshmi Kant: Pandey v. Union of India, (1984) 2 sec 244 : AIR 1984 SC 469; SumanlalChofelalKamdar. v. Miss AshaTrilokbhai Shah etc., AIR 1995 SC 1892

¹⁵Vishal Jeet v. Union of India and Others, AIR 1990 SC 1413
¹⁶AIR 1990 SC 292

¹⁷ AIR 1987 SC 191 :(1986)4 sec 106; Traffic in Women v. UOI, (2005) 12 sec 135

¹⁸Munshi Singh Gautam v. State of M.P., (2005) 9 sec 631 : AIR 2005 SC 402

¹⁹Traffic in Women, Prajwala (I) v. Union of India, (2005) 12 sec 135 and 136

²⁰BodhisatwaGautam v. Miss SubhraChakraborty, AIR 1996 SC 922

²¹SudeshJale (III) v. State of Haryana, (2005) 11 SCC 425