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A Study on the Women's Human Rights with a Reference of Domestic Violence Act, 2005

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ABSTRACT

The trend of domestic violence is increasing in India. The domestic violence against women is said to be invisible because it is observed that in a number of cases of the domestic violence, the victim is not supposed to go for the justice. Due to industrialization and globalization, the upper surface of India is growing in a better way but the sad reality of this modern century is that still most of the women are suffering from the bad evils like domestic violence where in most of the cases, the suffering women are threatened not to go for the justice.

There are many cases of women where these women are beaten cruelly by the so called men. The Indian society has been male dominant from the ancient times and men consider themselves superior than women. Here, most of the women are treated as an object by the men. In this age of women empowerment, these kinds of evils raise many questions against progress of India regarding the social status of women. The current paper highlights the women's human rights with some highlights on the Domestic Violence Act, 2005.

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KEYWORDS:

Domestic, Violence, Society, Law

INTRODUCTION

After the independence of India, the majority of cases regarding the domestic violence against women were observed in the families of lower as well as middle classes. For the purpose of protecting the human rights of Indian women, Indian government made a number of laws so that the justice can be provided to the women.

Due to increasing cases of physical violence against women, India government made a law known as Domestic Violence Act, 2005; where the clause of punishing the guilty person was included. This law was especially made in order to overcome the problem of domestic violence in the Indian society.

It is noted that the domestic violence comprises of three types of violence. In case of the physical abusing, a physical attack is done on the victim while in case of the sexual abusing; forced physical relations are made or tried to make. On the other hand, in the verbal abusing, insult is observed due to misbehavior.

According to one of the clause of the Domestic Violence Act, 2005; if a woman is living under the domestic relationship (here, marriage or any

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blood relationship can be regarded as domestic relationship) then in case of domestic violence; reliefment can be claimed by her.

According to this law, in case of the domestic violence; the victim woman has to complain about the incident to the police or magistrate where the process of the registration of the complaint is carried out. Here, the format of domestic incident report is used. A copy of this report is used as an evidence for the registered case.

Then, this report is transferred to the office of head of police of the concerned region. A number of sections are listed in the Domestic Violence Act, 2005. In this Act, the order of protection is mentioned in the Section 18.

Order of residence is specified in the Section 19 while Section 20 highlights the relief of money. On the other hand, the Section 21 of this Act comprises the custody order and order of compensation is specified under Section 22. The order regarding the interim or ex-parte is mentioned in Section 23.

In the whole procedure, the protection officer plays an important role as he is responsible for the registration of the complaints and sends this report to the Magistrate of the concerned area. This officer is also responsible for the medical aid where the task of the counseling of the victims is performed. In the case, every order which is passed by the Court; is effectively enforced by the protection officer.

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The surity of violence free environment for the women is tried to maintain under the Domestic Violence Act, 2005 where a lot of efforts are made so that the women can be protected against physical and sexual abusing. A number of measures are made in order to provide more and more services to the victim women.

WOMEN'S HUMAN RIGHTS WITH A REFERENCE OF DOMESTIC VIOLENCE ACT, 2005

The Act covers all women who may be mother, sister, wife, widow or partners living in a shared household. The relationship may be in nature of marriage or adoption. In addition relationships with family members living together as a joint family are also included. However, no female relative of the husband or the male partner can file a complaint against the wife or the female partner, for e.g. the mother-in-law cannot file an application against a daughter-in-law, but she can file an application against her daughter-in-law for abetting her son to commit violence against her.

Shared household is a household where the woman lives or has lived with the man in a domestic relationship. She may not be living in the shared household at the time of the application for relief but such women are entitled to relief under the Domestic Violence Act as long as the domestic relationship subsists.

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The origin of the Act lies in Article 15 (2) of the Constitution of India, which clearly says that "State can make special provisions for women and children" towards realizing the right to equality. This indicates the use of affirmative action to remedy a wrong. It is often said that India has several laws but they are not implemented. The problem, however, is not the lack of implementation, but the lack of a mechanism by which it can be implemented. Women have insufficient understanding of the law and lack of access to the courts. Hence it is necessary not only to enact a law but to provide the necessary infrastructural tools with which to access the law. The way of doing this is to put a mechanism in place in the law itself. In the Act, this has been done by creating the office of the Protection Officer and recognizing the role of the Service Providers. Affirmative duties have been imposed on the government to provide legal aid, medical facilities and shelter homes in the hope that women in distress be given all these facilities. The Act is a statement of commitment by the State that domestic violence will not be tolerated.

The Act defines "Domestic Violence" for the first time in Indian law. It is a comprehensive definition and captures women's experience of abuse and includes not only physical violence but also other forms of violence such as emotional / verbal, sexual, and economic abuse. It is based on definitions in international law such as the UN Declaration on Violence Against Women and a Model Code.

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The Act does not make any changes in the existing personal law regime on family matters. The reliefs under the Act are in addition to existing laws and have been recognized with the objective of empowering a woman to tide over an emergency situation. Having obtained relief under the law, a woman can still go for relief under other laws later.

Domestic Violence remains one of the most prevalent yet largely invisible forms of violence. Contrary to the general belief, Domestic Violence is not restricted to certain social sections. Domestic Violence occurs in many forms- physical, emotional, sexual, economic, verbal, etc. Woman faces Domestic Violence as a daughter, sister, wife, mother, or a partner in her lifetime. As per the NCRB Report 2003, 36.1% of the total reported crimes against women relate to domestic violence. As per NFHS (2) 1998-99, 1 in 5 married women in India experience domestic violence from the age of 15.

Prior to Protection of Women from Domestic Violence Act (PWDV) Act 2005, under the civil law, for acts of domestic violence a married woman can initiate proceeding for divorce/ judicial separation. However, this fails to provide any kind of immediate relief and protection to the woman. She remains at the mercy of her parents/ relatives. Also it leads to problems of costs and delays in litigation.

DISCUSSION

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Protection of Women from Domestic Violence Act, 2005 came into force from 26 October 2006. It is a very comprehensive and promising legislation that combines civil remedies with criminal procedures to ensure effective protection and immediate relief to victims of violence of any kind occurring within the family, The definition of 'domestic violence' is in consonance with the UN Model Legislation on Domestic Violence. The aggrieved can seek protection against any physical, sexual, verbal and emotional abuse or economic abuses. This law for the first time recognizes a women's right to a violence free home. Under the Act, the right to reside in the matrimonial home/shared household was seen as a major breakthrough in women's rights in India. She cannot be evicted from the shared household and if evicted can seek immediate relief, seek a protection order, monetary compensation, residency order, custody order, free legal services, medical aid and counseling with the help of the Protection Officer or Service Provider. The Act envisages appointment of domestic violence Protection Officers by the State Governments in every district and encourages the participation of voluntary associations as Service Providers. The Ministry of Women and Child Development, the National Commission for Women and the non-governmental organziations have also taken initiatives to propagate the remedies available in this Act to the affected women by organizing awareness campaigns/seminars/ workshops and sensitizing

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the enforcement agencies. In its understanding of domestic violence itself, the present Act clearly scores over the former Bill. Under section 3 of the 2005 Act, domestic violence is defined in terms of mental, physical, sexual, verbal, emotional and economic abuse. The extent of domestic violence hence extends from physical hurt to emotional and economic blackmail and may be interpreted by courts and lawyers to include and punish marital rape as well. The 2002 Bill, however, only included habitual assault and 'cruelty', and exempted cases in which the assaulter committed the act in self defence, or in the protection of his property. The Act introduces the concept of a domestic relationship.

This has broadened the scope of those who may ask for relief under the Act. Previously, only a woman who could prove a relationship with the respondent--either by blood or marriage--could avail of relief against domestic violence. The present Act requires only the proof of a domestic relationship as the basis for action. This provision goes a long way in recognizing existing social realities in India, where a vast number of marriages are legally invalid due to a number of reasons. The Act now makes it possible for the victims of violence in such relationships to approach the court for redressal.

Most commonly used provision of criminal law in dealing with cases of Domestic Violence is Section 498A of the Indian Penal Code. It makes cruelty to a wife by her husband or relatives an offence and attracts a

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maximum punishment of three years on conviction. Limitation of this provision is that it is not aimed at providing reliefs, namely maintenance, shelter, etc. It is confined to the prosecution and possible conviction of the offender.

CONCLUSION

Section 2(a) of the Domestic Violence Act defines "aggrieved person" as any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

The Domestic Violence Act not only covers those women who are or have been in a relationship with the abuser but it also covers those women who have lived together in a shared household and are related by consanguinity, marriage of through a relationship in the nature of marriage or adoption.

Even those women who are sisters, widows, mothers, single women, or li ving in any other relationship with the abuser are entitled to legal protec tion under the Domestic Violence Act.

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