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DOMESTIC VIOLENCE AGAINST WOMEN AND VARIOUS LEGISLATIONS IN INDIA: A STUDY

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Abstract:

For women, domestic violence is a worldwide phenomenon and type of discrimination against her which starts from her birth (even before birth) to the last breath. In India, throughout the whole span of life the women have to remain dependent on a male as during the childhood with the father as an obedient daughter, during youth with the husband as a disciplined wife and in the old age with the children as a calm mother. Due to this, she left with no alternative but to continue to live within the violent (economic, physical, sexual and emotional violence) environment of the household which may be experienced either once in her life-cycle phases or be continually exposed to multiple instances of violence at various points in time. Prior to the enactment of The Protection of the Women from the Domestic Violence Act, 2005, there was no specific to have a direct linkage with the term domestic violence. The present study is an attempt to understand legal aspects of domestic violence under the Act of 2005 and other associated statutory provisions.

KEY WORDS:

Adolescence, Civil law, Discrimination, Domestic violence, Exploitation.

INTRODUCTION

"From the cradle to the grave, women are objects of violence from those nearest and dearest to them. And it is a never ending cycle for there is considerable evidence of intergenerational transmission of domestic violence". (Freeman, 1979, p 239)

In Indian society, discrimination and exploitation on the basis of gender constitutes a serious issue which effectively means that half the population is unable to realize its potential and structured to sub-optimal standards of existence. Violence against women is one of the most vital, yet little understood and recognised factor in the phenomenon of marginalization of women in the society. Gender violence manifests itself in various forms female foeticide and infanticide, sexual abuse, incest, molestation, sexual harassment at work and on the streets, marital rape, domestic violence in the form of wife assault and woman battering. Of all the forms of violence that women face, domestic violence remains the least reported and largely suppressed.

DOMESTIC VIOLENCE AND INDIAN SOCIETY

For women, violence is a lifelong phenomenon. In India, it is a type of discrimination as well which continues by way of unequal access to resources, power and opportunities. There remains a complete withdrawal of the freedom of mobility; fear of and occurrence of sexual assaults; both within and outside of the family. The reproductive age is, for a lot of women, punctuated with physical, mental and emotional abuse by their husbands. Millions of Indian women face severe harassment due to unfulfilled dowry demands and many are victims of homicide and are even driven to suicide. The culture of dependency makes her helpless and choiceless but to continue to live with the family of the abuser (s). An important aspect is that a woman may experience violence either once in one of her life-cycle phases or be continually exposed to multiple instances of violence at various points in time.

NATURE AND EXTENT OF THE DOMESTIC VIOLENCE

Domestic violence is a form of violence against women that occurs within the framework of intimate relationships in a situation of dependency. Prior to 2005, domestic violence was not even recognized by the law as it was still an issue that 'can be sorted out within the four walls of the house' and some amount of violence is considered part of the normal 'wear and tear of marriage'. Domestic violence is the most serious violation of all basic rights that a woman suffers in her own home at the hands of members within her own family. Indeed, a number of recent studies such as the National Family Health Survey and National Crimes Records Bureau have identified the home as the site of violence against women and girl children. Almost every six hours, somewhere in India, a young married woman is being burnt alive, beaten to death, or forced to commit suicide. At least 20 percent of married women between the ages of 15 and 49 have experienced domestic violence at some point in their lives, domestic violence has not only serious consequences for the health and well-being of the individual women, but it also serves to maintain their subjugation as a class. It is generally denying the woman her rights as an individual.

The concept of equality between male and female was almost unknown to us before enactment of the Constitution of India. Of course, the Constitution, which is the supreme law of the land, seeks to secure to its citizens including women folk, justice-social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity and promote fraternity assuring dignity of the individual. The difference in treatment between men and women by the state is totally prohibited by the Constitution of India. But the equality of status guaranteed by the Constitution is only a myth to millions of women for whom life is stalked by various kinds of violence within their homes.

LEGISLATIVE INITIATIVE AGAINST DOMESTIC VIOLENCE IN INDIA

After the independence, the constitutional provisions conferred women with equal status with men. The government made an all out effort to raise the status of women in the various fields through legislation. Compulsory Education, the Hindu Marriage Act, 1955, raising of marriageable age, the Adoption Act, 1956, Dowry Prohibition Act, 1961 and legalizing of abortion are all in favour of women. But the law alone is not enough to bring about a radical change.

Notwithstanding the multiplication of legislation on various fields, with a view to improve the social, political and economic conditions and status of women, even the ancient forms of victimization, child marriage and premature consummation resulting in early and dangerous pregnancies sati, female infanticide, illegal abortions, dowry deaths, rape, eve-teasing and various other forms of molestation of women still continue. In fact, since the passing of the Dowry Prohibition Act and even after several amendments to the I.P.C., Cr. P. C. and the Evidence Act, dowry deaths are on the increase. Here are some of the statutory measures-

CRIMINAL LAW PERSPECTIVE

In Indian scenario, the Indian Penal Code, 1860 (IPC) supplemented by various special laws is the major substantial law which define and punish specific offences. Under the IPC, there is no direct definition of the term domestic violence but its meaning can be inferred from various provision such as 'culpable homicide', murder, dowry death, Abetment of suicide, cruelty by the husband or relatives, Female infanticide, or forcing the wife to terminate her pregnancy, misappropriation of the spouse's property, hurt, grievous hurt, grievous hurt by dangerous weapons' and voluntarily causing hurt to extort property, wrongful restraint or confinement of the spouse within her matrimonial home, use of force and assault on the spouse, are also forms of domestic violence recognized as offences under the IPC. Marital

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rape is yet another common form of domestic violence . By the year of 1983, matrimonial cruelty was introduced as an offence in the IPC. Cruelty was defined as "any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life or limb or health (whether mental or physical) of the woman". It includes harassment of the woman in connection with demands for property and the like.

Under some special legislation the domestic violence has been recognized in various forms such as The Dowry Prohibition Act,1961, criminalizes the giving and taking of dowry. There is another form of domestic violence which was rampant in our past but ebbed in the last century, i.e. Sati which means the burning or burying alive of widow along with the body of her deceased husband or any other relative, or with any article, object or thing associated with the husband or relative. The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 recognizes that domestic violence is also perpetrated in the form of forced termination of female fetuses .

CIVIL LAW ON DOMESTIC VIOLENCE

In Civil law there is no specific definition of domestic violence. In this connection, it too seeks references from criminal law. Even references in the statutes to aspects of domestic violence are generic and it is only through judicial decisions that such provisions have been given life and meaning. The Dissolution of Muslim Marriages Act, 1939 (DMMA), stipulates cruelty as a ground for divorce. The Hindu Marriage Act, 1955 (HMA,) term cruelty has been understood to mean acts of physical as well as mental cruelty and is a ground for divorce as well as judicial separation. The Special Marriage Act, 1954 (SMA) , The Indian Divorce Act (IDA), and The Parsi Marriage and Divorce Act (PMDA), all allow 'cruelty' as a ground for divorce. However, none of the Acts elaborate or detail the nature of cruelty. Domestic violence would certainly qualify as cruelty under these statutes.

The Protection of Women from Domestic Violence Act, 2005

To be honest, before 2005, there was no definition of domestic violence in Indian law. A frequent perception of domestic violence against women is that it is limited to physical harm perpetrated on adult women within a marital relationship. But the definition of domestic violence has been made broad by the Act of 2005 which acknowledges the multiple possibilities would lead to domestic violence that are more inclusive of the experiences of all women. This Act defines the expression "domestic violence" to include actual abuse or threat of abuse-physical, sexual, verbal, emotional or economic violence . The core of a definition of domestic violence consists of all the acts that constitute violence. Some definitions are narrow and focus on a specific act of violence and others are broader and incorporate the full range of acts.

CONCLUSION & SUGGESTION

To meet the challenge of violence against women, different strategies are being suggested. Though emphasis is on legislative machinery, other forces are to be gear up. For development of the country as whole, the single largest group of "backward citizen", the girls/women, who are suffering problems and challenges of violence, inequality exploitation and discrimination, are to be reached properly. This is possible only if all dimensions of welfare and development policies attack the women problems and help women to meet the challenges. Thus, where legislation exists, it needs to be strengthened and more vigorously implemented. Where programmes exist, they need to be reoriented to serve this aim of achieving parity not only between men and women but also between different sections of women themselves. Where policies and programmes do not serve the special needs of women, they need to be amended or recast. Where benefits do not reach the mass of our women, there is a need for special intervention to enhance accessibility. And where women are unable to absorb the benefits meant for them they need to be empowered to help themselves.

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6. Section 299, IPC.

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7. Section 300 IPC.
8. Section 304B, IPC.
9. Section 306, IPC.
10. Section 498A, IPC.
11. Sections 313-316, IPC.
12. Section 405 read with section 406, IPC
13. Section 321, IPC.
14. Section 322, IPC. Read with sec. Section 323, IPC
15. . Section 326, IPC.
16. . Section 327, IPC
17. Section 349, IPC.
18. Section 340, IPC.
19. Section 349, IPC. A person is said to use force to another if he causes, motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion as brings the substance into contact with any part of the other's body, or with anything which that other is wearing or carrying or with anything so situated that such contacts affect that other's sense of feeling.
20. Section 351, IPC. Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.
21. Section 375 IPC
22. Section 498A, IPC
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