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DOMESTIC VIOLENCE ACT-A SHIELD NOT A SWORD

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Domestic Violence Act-A Shield Not a Sword

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Abstract – Domestic violence is extremely complex vicious form of abuse, committed most often within four walls of the family or within a particular deep rooted power dynamic and socio-economic structure, which do not allow even the recognition or acknowledgement of this abuse. A woman may of any age, she may girl child, unmarried, married or elderly women including a widow or such women with whom men have marriage like relationship.

Key-Words : Domestic Violence, Fundamental Rights, Directive Principles.

It is not enough for women to speak out in the issue for the message to be strong and consistent, Women's voices must be backed up by men's.....

.... Sin. John Conyers, Jr

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INTRODUCTION

Domestic violence should not take place No women should become a victim to domestic violence at any stage. But it does & when it does, there is help. May be you lived with abuses, may be it happened just once, and may be you work live next to someone who is abused right. Domestic violence affects- in every all families. In the past victims of domestic violence were silenced. Their pleas for help on deaf ears, as our society continued to look the other way.

These are new times that we live in where victims of all ages, genders & ethnicities have a stronger voices. We will no longer deny them the voices with which they will speak out to heal themselves & strengthen others.

TORTURE & HARASSMENT OF WOMEN

Domestic violence is extremely complex vicious form of abuse, committed most often within four walls of the family or within a particular deep rooted power dynamic and socio-economic structure, which do not allow even the recognition or acknowledgement of this abuse. A woman may of any age, she may girl child, unmarried, married or elderly women including a widow or such women with whom men have marriage like relationship.

Looking at the domestic front, starting from Vedic age to 21st century . Women in India perhaps have never experienced equal right & freedom compared to their male counterparts. The concept of “Ardhangini” seems to be restricted only in literatures & have never

implemented in practical life . In addition to this, extracts from Ramacharita Manas of Tulsi Dass Like ‘Dhol, gauwnaar, Shundra, Pastu and Navi, Sakal Tadanka Adhikari, besides other indicators like Paradha System, Sati System, that are subject to women only, is a reflection of the history of women's subordinate status, it is always the women who have to be in the tight rope, subject to inequality & looked down as an inferior sex, and combined with socio cultural norms that are inclined towards Patriarchy & Masculinity can be considered as an important factor determining the domestic violence.

LITERARY REVIEW:- NATIONAL LEGAL RESEARCH

The principle of gender equality is enshrined in the Indian constitution in its Preamble, Fundamental Right & duties, & Directive Principles. The constitution not only grants equality to women, but also empowers the state to adopt measures of positive discrimination in favour of women. Within the frame work of democratic policy, our laws, development policies, plans & programmes have aimed women's advancement in different spheres.

CONSTITUTIONAL PROVISIONS

The constitution of India not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic, education & political disadvantages faced by them .Fundamental Right, among other ensure equality before the law & equal protection of law,

prohibits discrimination against any- citizen on the ground of religion, race, caste, sex & guarantee equality of opportunity to all citizen in matters relating to employment. Articles 14, 15, 15(3) 16, 39 (a), 39 (b), 39 (c), & 42 of the constitution are of specific importance in this regard.

LEGAL PROVISIONS

To uphold the constitutional mandate. The state has enacted various legislative measure Intended to ensure equal rights, to counter social discrimination & various forms of violence & atrocities & to provide support services especially to working women.

VIOLENCE IDENTIFIED UNDER THE IPC

Sec. 376 – Rape

Sec. 363-373 – Kidnapping & abduction for different purposes.

Sec. 302/304B – Homicide for Dowry, Dowry Death.

Sec. 498 – A – Tonsure both mental & physical.

Sec. 354 – Molestaion

Sec. 509 – Sexual Harassment.

PROTECTION UNDER CRIMINAL LAW

The incidence of domestic violence against women has been increasing over the year. Women are subjected to violence namely cruelty by husband or his relatives, dowry death & grievous hurt. The criminal law offers to options that one is prosecuting abusers for committing offences. If a women is facing violence at home, she can approach criminal court, the 2nd is a preventive measure by getting the abuser to executive bond for keeping the peace.

In order to combat the increasing incidence of for lure of women by their husband & relatives, the legislature enacted Sec. 498A of IPC & Sec. 113A of the Indian evidence Act. In order of convict a person for crime under sec. 498A of IPC the prosecution has to prove that the accused committed act of harassment or cruelty as contemplated by the section & that the harassment or cruelty was the cause of suicide. Many women have been killed by their husband or relatives out of greed for more dowries. And legislature introduced provisions under Sec. 304B in IPC & Sec. 113B in evidence Act. & Sec.494 & 495 IPC for bigamy.

Domestic violence may be physical, mental, sexual, emotional & economical. The Act stipulator the appointment of functionaries such as protection officers, Service Providers to assist the complainant of women in assisting the court & other support services appointed by State Government by notification & registration to do all duties entrusted to it under the

Act. Directing to stop violence, residence orders as to present disputation for restoration in case the women has already been thrown out, monetary relief, enabling the aggrieved women to meet the expenditure incurred due to the violence & even include maintenance, compensation orders conferring the damages for the mental agony suffered & custody orders enabling the aggrieved to have temporary custody of children so as to guard her against any form of harassment over the issues.

PROTECTION UNDER CIVIL LAW

The recognition of domestic violence is the concept of cruelty as a ground for divorce and judicial separations. Civil remedies against domestic violence are to be found in specific Relief Act & CPC. The basic principle of civil is that an invasion of a right or a threat of such an invasion would entitle a person to a mandatory or prohibitive injunction as a means of respect to maintenance & custody & guardianship of children, even they can claim for maintenance from their father. A women will have to start legal proceedings for guardianship if her husband is threatening to deny or has denied to her children or if she wishes to prevent her husband from having access to them.

CONCLUSION

The foregoing analysis reveals not only wide spread prevalence of domestic violence in India but also the acceptance of majority of ever – married women to at least one reason for justifying a husband beating his wife. There are again large scale interstate difference in the prevalence as well as acceptance of violence among women. Nevertheless, it is the husbands who are reportedly the perpetrators of violence showing one reason of another.

The experience of violence undermines the empowerment women and certainly is a barrier to a socio – economic & demographic development of the country. Thought the present finding are silent about the legal side of the issue, stringent laws against the perpetrators of the violence, laws giving more right to the women will always be beneficial to curb the issue. In order to address the problem, social norms & value towards gender roles should be transformed to facilitate the implementation of appropriate & meaningful responses to domestic violence & ultimately to prevent it from happing all together. The role of judiciary as law enforcement instrument, towards protecting women involves the identification of right in a beneficial manner whenever & wherever possible.

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