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A CRITICAL STUDY ON THE LAW RELATING TO DOMESTIC VIOLENCE IN INDIA

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ABSTRACT

Domestic violence which is also termed as domestic abuse or intimate partner violence or when one partner feels the need to control and dominate the other then abuse will start. Abusers generally used to control and dominate their partner when they feel there is a need to do this because there is low self-esteem, jealousy, difficulties or differences in regulating anger and other emotions, or when they used to feel inferior to the other partner in education and socio-economic background or lower from every aspects than their other partner. There are some people with a traditional or ancient beliefs may think that they have right to control and dominate their partner or spouse, and the women are not equal to men. Others are suffering or suffered from an undiagnosed personality disorder or psychological disorder. Other people may learn this behavior because they are growing up in a household where domestic violence was accepted as a normal part or normal behaviour of their family. The emotional, physical or sexual abuse will be created due to the domination of one partner over another partner. According to some Studies the violent behavior is happened due to the interaction in between situational and individual factors. which means that the abusers are learning or learned the violent behavior from their own family, the people residing in their community, other cultural influences because they grow up. They may see the violence often or they may be victims also. And domestic violence is indirectly tried to stop by the dowry prohibition act 1961. Domestic violence is mainly regulated by Indian penal code 1860, code criminal procedure 1973, Protection of women from domestic violence act 2005. etc. This paper endeavours to highlight the concept of domestic violence in India, definition of domestic violence in India, forms of domestic violence, in India, laws relating to domestic violence in India, causes and effects of domestic violence in India etc, on the basis of existing literature, reports, studies, different cases and other relevant materials, etc.

Key words: Domestic violence Indian penal code 1860, protection of women from domestic

violence act 2005, code criminal procedure 1973, intimate partner violence, women, men, dowry prohibition act 1961.etc.

INTRODUCTION

In my introductory part i would like to state that the domestic violence in India means any form of violence suffered by any female or any women from a biological relative or her husband's family member or her husband's any relative, typically is the violence suffered by a female or a woman by male members of her family or relatives. As per National Family and Health Survey in 2005, total lifetime prevalence of domestic violence was 33.5%, 8.5% for sexual violence among women or girl aged 15–49 years. In 2014 a study was done in The Lancet reports that the reported sexual violence rate in India is lowest in compare to other countries of the world. The large population of India signifies that the violence affects 27.5 million women or girl over their lifetimes. Anyways, A survey was done by the Thomson Reuters Foundation which stated that the India is the most dangerous country in the world for girl and women. According to the 2012 National Crime Records Bureau report of India (NCRB) implies a reported offence rate of 46 per 100,000, rape rate of 2 per 100,000, dowry homicide rate of 0.7 per 100,000, the rate of domestic cruelty by her husband or his relatives as 5.9 per 100,000. These reported rates are mainly smaller than the reported domestic violence rates in many countries including India also, for example: the United States (590 per 100,000) reported homicide (6.2 per 100,000 globally), offence and rape incidence rates per 100,000 women for most nations tracked by the United Nations. There are various type of domestic violence laws in India. The previous law was the Dowry Prohibition Act 1961 which means giving and receiving dowry a offence. Later The two new sections, Section 498A and Section 304B were introduced and added in the Indian Penal Code 1860 in 1983 and 1986. And The recent legislation is the Protection of Women from Domestic Violence Act 2005 PWDVA. The PWDVA is a civil law, which includes the physical, emotional, sexual, verbal, and economic abuse as a domestic violence.

CONCEPT OF DOMESTIC VIOLENCE IN INDIA

Domestic violence also known as domestic abuse or family violence or intimate partner violence is a violence or abuse in domestic setting, for instance: marriage or cohabitation or sexual intercourse. which is done in between the spouses or the partners in an intimate relationship, which can take place in heterosexual or homosexual relationship or between former spouses or partners. In its broad sense, domestic violence also termed as the violence

against children, parents, or the elderly person. There are various forms of domestic violence in India, that is physical, verbal, emotional, economic, religious, reproductive, and sexual abuse, subtle, coercive forms, marital rape, violent physical abuse for example: choking, beating, female genital mutilation, and acid throwing which results death etc. And domestic murders means stoning, bride burning, honor killings, and dowry deaths which exist sometimes non-cohabitating family members also.

DEFINITION

Domestic violence in India is currently defined by the Protection of Women from Domestic Violence Act of 2005. According to Section 3 of this Act- any act, omission or commission of the respondent shall constitute or create intimate partner violence or domestic violence in case if it: harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

FORMS OF DOMESTIC VIOLENCE IN INDIA

Physical violence: Physical injury or harm is the most visible form of domestic violence. Where a girl or woman is injured or harmed physically by her husband or by her husband's family member or by her husband's relative etc. The physical domestic violence means slapping, pushing, kicking, biting, hitting, throwing objects, strangling, beating, threatening with any form of weapon, or using a weapon etc. In a Worldwide, the percentage rate of women who suffer physical injuries from physical domestic violence is increased from 19% – 55%. And the Physical injuries of women are more than psychological injury or harm.

Emotional abuse: Emotional abuse is such a situation where a wife or a female is suffered or tortured mentally or emotionally by her husband, by any family member of her husband, any relative of her husband.

Sexual assault: Domestic sexual assault is a form of domestic violence where a wife is not interested to do sexual intercourse with his husband due to her menstrual cycle period or any sort of physical or mental illness in that event if the husband has created various type of force, pressure to do sexual intercourse with him than the husband will be liable for marital rape. Section 375 of the Indian Penal Code 1860 says that the forced sex in marriages as a crime only when the wife is below 15 years of age.

Verbal and emotional abuse: Verbal abuse includes remarks/threats made by the domestic relations during domestic violence against women. Verbal abuse further leads to emotional abuse and in an incredibly common form of domestic violence from the human rights perspective. The combination of verbal and emotional abuse leads to psychological abuse and erodes a woman's sense of self-worth.

Economic abuse: In this violence a wife or a female is suffered financially or economically by her husband or any family members or any relative of her husband. For example: a wife or a female is restricted or confined by her husband from joining any job or higher education. Introducing economic abuse in the categories of abuses under the Domestic Violence Act has been a remarkable step by the government. Economic abuse is generally characterised as a method of depriving or threatening to deprive the victim and her children from the use of financial resources/assets.

Honor killing: An honour killing is the practice wherein an individual is killed by one or more family members, because he or she is believed to have brought shame on the family. The shame may range from refusing to enter an arranged marriage, having sex outside marriage, being in a relationship that is disapproved by the family, starting a divorce proceeding, or engaging in homosexual relations.

DOWRY SYSTEM IN INDIA

Domestic violence is also happened because of the unlawful demand of dowry. There are very strong relation between domestic violence and dowry, a cultural practice deeply rooted in many Indian communities, which is the money, goods, or property the woman/woman's family brings to a marriage to now become under the ownership of the husband. The practice of dowry in India now a days banned by dowry prohibition act 1961. In present years dowry amounts or

money have increased dramatically. In 2005 a study published in the World Development, which results from a survey pointed to a negative relation between the dowry amount or money and inter-spousal tension or violence. These dangers talks about the common physical, emotional abuse for example: hitting, continual degradation, and in some cases the dowry death and bride burning are happened due to the husband's dissatisfaction with the dowry amount or payment. In 2010, 8391 dowry deaths reported, in 1997, 6995 the dowry deaths reported.

UNDER- REPORTING OF DOMESTIC VIOLENCE

Indian women are experienced and they are determined nowadays to report or prosecute the offence of domestic violence. And Many women nowadys can file cases under section 498A of Indian Penal Code 1860 for combating or eradicating the offence of cruelty or physical and mental harasment. Which also gives a place to women or girl to enhance their concerns. Domestic violence was not taken sometimes as a legitimate offence or complain, but actually it's a more private or family matter which is dealig with the rights of women as citizens. But this trend has changed by the Section 498aA which is introduced in IPC 1860 to protect, prevent the women from Domestic Violence irrespectively on the basis of Caste, class, religious bias and race. For instance, poor or lower-caste girls or women don't have the same access to legal enforcement or education, they are having trouble in getting help from law enforcement.

LAWS RELATING TO DOMESTIC VIOLENCE IN INDIA

There are several laws protecting a married woman from abuse from her husband or her husband's relatives. Under Section 498A of the Indian Penal Code, harassment for dowry by the husband or his family is considered a crime. This harassment can be either mental or physical. Even though marital rape is not recognized as a crime in India, forced sex with one's wife can be considered cruelty under this section. Section 498 A of IPC 1860 has a broad scope. It deals with the all wilful activities against a girl or woman which instigate the girl or woman to commit suicide or henious grave injury or endanger or risk to life, limb or overall health. The term health deals with the mental and physical health of the girl or woman. The practice of dowry is strictly prohibited under the Dowry Prohibition Act, 1961. Despite this fact, if the dowry has provided to and also received or taken up by anyperson other than the woman, in that event, she is entitled to that money/property as the case may be under the dowry prohibition Act 1961.

Women against Domestic Violence Act 2005 prohibits a wide range of abuse against women — physical, emotional, sexual and economical and all these are extensively defined under the Act. The scope of the Act covers women who are in a live-in relationship and are not married. A woman has the choice to be free from violence and has various options under this Act. Any women or girl has also a right to get relief under an order of protection against her husband and his family, to living continue in the same house i.e. she will not be thrown out of her matrimonial house, even if she reports to the compitant authority about her abusers, to claim various type of maintenance, to have the custody of her children also to claim for compensation on the besis of the domstic violence. According to the domestic violence Act 2005 and also under section 125 of the Indian Penal Code, a woman does not have to necessarily file for a any type of divorce for getting a right to receive maintenance from her husband. A petition for maintenance is maintainable even in the absence of one for divorce. The Hindu Succession Act, after its 2005 amendment recognizes that women have an equal right in ancestral properties of their families: this is their legal right which is to get the same share as their brothers may get. We found that women girl are unaware of this property right and even if they are, they would not want to use their rights. The Equal Remunerations Act, 1976 says that it is mandatory for employers to not discriminate on grounds of sex, or gender when it comes to paying their employees and also providind appointment to the employees, and not to discriminate in matters of promotion, training, transfer, etc. We expect that our followers will inform themselves through this page and will take a moment to reflect on whether they can be an important connection for a victim- the one person who starts a series of kind actions that can pull someone out of distress.

CAUSES OF DOMESTIC VIOLENCE IN INDIA

There is no uniform or single reason that leads to domestic violence. It is a combination of various sociological/behavioral, historical, religious, and cultural factors that lead to perpetration of domestic violence against women.

Sociological/Behavioral Factors: The sociological, behavioral and cultural factors include factors like anger issues/aggressive attitude, poverty/economic hardship, difference in status, controlling/dominating nature, drug addiction, upbringing and psychological instability (bipolarism, depression, stress, etc.) among others. Neglect of conjugal responsibilities due to extra-marital affairs or lack of trust also contributes to domestic violence.

Historical Factors: Historical factors can be traced back to the inherent evil of patriarchy and superiority complex that has prevailed for centuries among men.

Religious Factors: A subtle form of domination on women, if not direct and glaring, reflects in the religious sanctifications. This also contributes to perpetration of domestic violence against women.

Cultural Factors: Cultural Factors leading to domestic violence include the desire for a male child. This obsession resulting from the lack of awareness and inherent male superiority leads to perpetration of domestic violence against women. This is not an exhaustive list of factors and the motivations or triggers behind domestic violence may vary.

Dowry: Dowry is a form of socio-cultural factor. But, it becomes important to separately mention it because of the rampant domestic violence cases resulting from illegal demand of dowry. This was realised by the Parliament also because dowry-related domestic violence has been made a separate head in the scope of abuse resulting in domestic violence under the Domestic Violence Act.

CONSEQUENCES OF DOMESTIC VIOLENCE IN INDIA

Domestic Violence against women can cause long term and short term physical and mental harm. The domestic violence against women also affects the children in the family causing long-lasting impressions on a child's vulnerable memory. **Short Term Consequences:** The short-term physical effects of violence can include minor injuries or serious conditions. It includes the various type of bruises, cuts, broken bones, injuries to organs and other parts which are inside the body. Physical injuries or hurms are impossible to see without any scans, x-rays, or other tests done by any doctor, any nurse. The long-emotional and verbal abuse might affect the woman's mood and children's mood in their day to day activities & might also reduce the efficiency.

Long-term Consequences: Violence against women, including sexual or physical violence, is linked to many long-term health problems. Long-term mental health effects of violence against women can include Post Traumatic Stress Disorder, Depression or Anxiety. This can further

lead to the problem of substance abuse and drug addiction. Sexual violence can result in irreparable injury to sexual violence and a loss of self-worth

SOME NOTABLE DOMESTIC VIOLENCE CASES IN INDIA

1. In the case of **Roma Rajesh Tiwari vrs Rajesh Dinanath Tiwari**, the Bombay (Mumbai) High Court stated on the right of every girl and women that to stay in her matrimonial house / shared household. The honourable Court observed that the Statement of Objects, Reasons of the Act makes this clear that, the domestic violence Act 2005 is enacted to secure or protect and prevent the right of every girl or woman to stay in her matrimonial house or shared household, irrespective of this that 'whether she has any right, title or interest in the said household or not. It is also irrelevant whether the Respondent has a legal interest in that shared household. The moment when it is proved that it was a shared household, because both of them had, in their matrimonial or marital relationship, that is: domestic relationship, resided together. in this case, upto the differences arose, it follows that the Petitioner or applicants -wife gets right to stay, and also to get the order of interim injunction, restraining Respondent-husband from dispossessing her, or, in any other manner, disturbing her possession from the said flat or house.
2. In the case of **Sabita Mark Burges Vrs Mak Lionel Burges**, in this case, the Bombay High Court held that no matter that a man can own a any particular house, and he has no any right to do domestic violence against his wife. And if the court observes any domestic violence is going on in that event, he must be restrained from entering upon the residence or matrimonial house to protect and prevent the wife and children against further any domestic violence and any similar disputes or differences .Object behind enactment of section 19 of Domestic violence act- in dabita mark burges case, the bombay high court behind residence order as- It is common obervance that the applications for grant of injuction in relation to the residence and possession of the respondent is seen by the courts on the proprietary rights of both the parties.
3. In the case of **Manju Sharma vrs Ramesh Sharma**, in this case, the district court of Delhi under section 19 (1)(b) of domestic violence 2005 stated that the law empowers the court to direct the removal of respondent from the shared household, and this power can be used and exercised on the basis of exceptional circumstances.
In this case, the interim protection was given to the wife and the respondent was

restrained from doing any kind of domestic violence on the aggrieved person or victim. Anyways, the respondent disobeyed the aid order on two occasions. He continued doing domestic violence on the aggrieved person or victim, except the protection order granted in favour of the aggrieved person or victim. So, considering the facts of the case, the honourable court passed directed the respondent husband to remove himself from the shared household or matrimonial house under section 19(1)(b) of domestic violence act 2005.

4. In the case of **Ajay kumar jain vs Baljit Kaur jain**, in this case, the court observed and stated that a wife cannot have right to live alone in a particular property, if the husband had offered a suitable alternative arrangement for her. In this case, The honourable court also upheld that she cannot insist or request or demand to her husband or court for living or staying in the suit property alone if she is getting another alternative arrangement for her residing.

DOMESTIC VIOLENCE DURING COVID19 LOCKDOWN PERIOD

Recent data released by the National Legal Services Authority (NALSA) suggest that the nationwide lockdown due to pandemic corona virus disease (COVID19) has led to a rapid increase in cases of domestic violence. The state of uttarakhand recorded the highest number of domestic violence cases among other states in India in the last two months of covid 19 lockdown period on the basis of the data of different states cases. So the state of uttarakhand ranks on number 1. Haryana ranks on number 2, the national capital Delhi on number 3. According to the report of NALSA, the domestic violence cases are very increased from starting the covid 19 lockdown that is from 24. March.2020 to till 15. May. 2020 which was collected by 28 State Legal Services (SLAs). According to this report a total of 144 cases of domestic violence were reported in Uttarakhand. And in Haryana, the number of cases were 79 and in Delhi the no of cases were 69. The Women in Telangana had to face various type of domestic violence. According to the cases registered through Sakhi One Stop Centers (centers that provide integrated support and assistance under one roof to every girl or women affected by domestic violence, both in private and public spaces) in April, 89% of cases of domestic violence were registered.

According to Prof U Vindhya, Sakhi OSC Project, Leader & Deputy Director, The Tata Institute of Social Sciences (TISS), campus of hyderabad, these numbers will help in supporting the present worldwide research regarding the enhanced risk of domestic violence

within the home because of the lockdown period. The of domestic violence cases is not only restricted in India India. The lockdown has brought the world to a standstill. The lives of every women in the the globe or world, those who are in any abusive relationship have come to a halt. The same domestic violence is repeated going on and perpetrated frequently, on a regular basis during the lockdown period. The Various type of domestic violence helplines organizations which are toll free number all over the world are working continuously to deal with this world wide global issue.

REMEDIES OF DOMESTIC VIOLENCE

In remedy section I would like to state simply that, if any femail or wife is suffered or suffering from any type of domestic violence by her husband or any family member of her husband or any relative of her husband in that event either she can file an FIR under section 498A of Indian penal code 1860 or she can file a case under the protection of women from domestic violence act 2005 to the nearest protection officer or to the judicial magistrate who is having the jurisdiction to deal with this case for getting any sort relief or financial assistance. And the respective court who is having the jurisdiction to deal with this case can grant or provide the financial assistance or relief to the victim of domestic violence either under the protection of women from domestic violence act 2005 or under section 125 of the code of criminal proceedure 1973 on the besis of the gravity of the case. etc.

CONCLUSION & SUGGESTION

The Government of India passed a Domestic Violence Bill, 2001, To protect the rights of women who are victims of violence of any kind occurring within the family and to provide for matters connected therewith or incidental thereto The Protection of Women from Domestic Violence Act, 2005 also passe. The protection of women from domestic violence act 2005 states the reporting of cases of domestic violence against girl or women should have file towads a 'Protection Officer' who then prepares a Domestic Incident Report to the judicial Magistrate who is having jurisdiction to deal with this issue and forward the copies to the police officer in charge of the police station within is also having the local imits of jurisdiction t deal with this matter. From this preliminary study, it can be concluded that the domestic violence can cause various negative significant effect to the victim's health and their performance at work. Having policies in place to recognise and support victims can help limit the costs associated with domestic violence by helping victims to stay in paid employment and eliminate the need to hire

and train new employees. Furthermore, with economic security and access to domestic violence resources, victims are more likely to be able to leave their abusive situations, limiting the financial losses due to poor work performance, distraction, and absenteeism. Realising the impact on the violence against women to the society and the country, especially on the health and wellbeing of the victims and the nation, prevention is always possible and essential. Therefore, various activities need to be implemented that suits the target groups' needs in different states, with multiple layers of target group both urban and rural areas. It is believed that workplace, government and legislative interventions together with great initiatives from communities especially NGOs are the most important efforts in combating domestic violence. The findings of this research paper would help the policy makers and authorized agencies, every non-governmental organizational, every leaders to strategize, adequately craft a suitable and high impact function that suits the target groups needs, lifestyle etc. Unfortunately, presently there is no any single law in the constitution of India which may strictly deal with the different forms of 'Domestic Violence in India'. There is an emergent requirement for such a law in our country. In India section 498-A and DVA, 2005 has also been misuse because of the restricted definition of cruelty related to married women.

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