VOL. 5 | ISSUE 2 | MARCH 2019

ISSN: 2454-5503
IMPACT FACTOR: 4.197(IIJIF)

CHRONICLE OF HUMANITIES AND CULTURAL STUDIES

Seminar Proceedings

DOMESTIC VIOLENCE: RESPONSE AND PREVENTION

Issue Editor
Manik Panditrao Shinde

Associate Editors
Madhav Sopanrao Kadam
Tukaram Sitaram Garad

Editor
Dr. Shivaji Baburao Parale

CONTENTS

1. Domestic Violence: Care and Preventive Measures	Shankpale J.R.	6
2. Analytical Study Of Prevention Of Domestic Violence Against Women With Special Reference to DV Act, 2005	Dr. Harsha Suryawanshi	9
3. Comparative Study Of Vital Capacity Between Sports and Non-Sports Women	Bhushan Wamanrao Bhujbal Dr.Aher Prabhakar	12
4. Indian Society and Dowry System	Vijay Maroti Magare	15
5. Understanding the Feministic Voices against Sexual Harassment	Dr. Mundhe Ramakant D.	16
6. लग्न कर माझ्याशी नको बोलीच्या हुंड्याशी	डॉ. खानापूरकर वर्षा डॉ. कदम उषा	18
7. स्त्रियांवरील अत्याचार आणि पुरूषांची मानसिकता...	माणिक पं. शिंदे	22
8. मराठी कवितेतून व्यक्त होणाऱ्या समकालीन स्त्री जीवनातील अडचणी	डॉ. निलेश ए. लांडे	23
9. महिला व मुलींवरील कौटुंबिक अत्याचार/शोषण कारणे व उपाय	वंदना बालटकर	28
10. राजकारण व महिलांचे शोषण	डॉ. राठोड डी.बी.	30
11. पुरुषप्रधान संस्कृतीची विकृतावस्था- महिलांचे लैंगिक शोषण	सुरेश भिमराव लोकुळे	32
12. हुंडा व महिलांचे होणारे शोषण-एक अभ्यास	लोडे परमेश्वर लिंबाजी	34
13. महिलांसमोरील नवी आव्हाने	डॉ. डि.के. खोकले	36
14. कामाच्या ठिकाणी होणारे महिलेचे शोषण/अत्याचार	प्रा. गजानन बा. मरगीळ	38
15. स्वातंत्रोत्तर कालखंडातील कुटुंब आणि स्त्री विषयक कायदे	डॉ.एन.जी.सुर्यवंशी	41
16. लैगिंक अत्याचार – कायदा व सुव्यवस्था	प्रा. पल्लवी प्र. जोशी	43
17. विधवा, परितक्त्या आणि लैंगिक अत्याचारास बळी पडलेल्या महिलांचे समाजातील स्थानः एक मानसशास्त्रीय अभ्यास	डॉ. बद्रीनाथ डी.शेळके	47
18. हुंडा व महिलांचे शोषण	तुकाराम वसराम आडे	49
19. धर्मसंस्था व महिलांचे शोषण	रामप्रसाद मो. व्हडगीर	51
20. भारतीय महिलांची स्थिती	मारोती रा. कोल्हे	54
21. अत्याचारित स्त्रिया आणि नैतिकता	डॉ. भुसारे सुनंदा रा.	56
22. भारतीय तत्त्वज्ञानात स्त्रियांचे स्थान	प्रा. सौ. गोदावरी ना. भुसारे	58
23. नौकरीच्या ठिकाणी महिलांचा होणारा लैंगिक छळ	तुकाराम सिताराम गरड	60
24. लैंगिक शिक्षण : एक काळाची गरज	प्रा. माधव सो. कदम	62
25. लैंगीक अत्याचार : कायदा व सुव्यवस्था	प्रा.चाटसे अशोक ज.	64
26. भारतातील महिलांचे ऑनलाईन लैंगिक शोषन	डॉ. शिवाजी बा. परळे	66
27. आधुनिक युग में महिला सशक्तिकरण	भालेराव सुधाकर ना.	69
28. साहित्य में व्यक्त शोषित नारी	प्रा.डॉ.विजया गाढवे	71
29. महिला सबलीकरण व सत्यशोधकीय तत्वज्ञान	प्रा. सच्चिदानंद फु. खडके	73
30. महिलांवरील कौटूंबिक अत्याचार व उपाय	डॉ.गुरुदास आ.लोकरे	74

2.

Analytical Study Of Prevention Of Domestic Violence Against Women With Special Reference To DV Act, 2005

Dr. Harsha Suryawanshi
Asst. Prof.
MSP Mandal's Shri Shivaji Law College, Parbhani

Abstract:

The term domestic violence to violence committed against vulnerable persons by persons residing with them in a family and hence it is a misnomer. A person is supposed very safe in the family but he/ she is not so and hence term domestic violence is said misnomer. Generally weak persons are victims of violence and in case of domestic violence women are primevictims due to patriarchal stature of society. Therefore, women need protection against domestic violence and in an attempt to this end, the Protection of Women from Domestic Violence Act, 2005 was passed. The Act primarily focuses on providing multiple civil remedies to women promptly. These remedies include right to reside in a shared household, protection orders, monetary orders, residence orders, custody orders, compensation orders. In this paper, attempt is made to study these remedies available for women in view of its necessity and effectiveness.

Key words: Domestic violence, protection, remedies, victims, women.

Introduction:

"Women have the right to the enjoyment of the highest attainable standard of physical and mental health. Good health is essential to leading a productive and fulfilling life, and the right of all women to control all aspects of their health in particular their over fertility is basis to their empowerment.....However health and wellbeing elude majority of women."[1]

The problem of domestic violence is widely prevalent but has remained by and large latent in the account the increasing prevalence of domestic violence in this country that the Parliament came out with the Protection of Women from Domestic Violence Act, 2005 hereinafter called DV Act, to combat violence occurring within four walls of the home. The object of the Act is to provide for an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family.[2]The present paper attempts to analyze multiple remedies, reliefs guaranteed to women under the DV Act.

Aims and objectives:

The present research paper aims to study the concept of domestic violence. The object is that after studying the concept of domestic violence, one would be able to locate the reasons behind the violence and ultimately pin point the meticulous remedies. Hence object of present research is to search the remedies and reliefs for victims of domestic violence. It also endeavorsto study these remedies analytically.

Significance of the topic:

Domestic violence is not limited to a particular place, society or time, it occurs in every strata of society and encompasses within it many forms of violence, visible as well as invisible. Half of the world population is constituted by women but they are under privileged resulting into their exploitation. This topic is chosen to highlight the need of prevention of domestic violence and remedies in case of domestic violence.

Methodology adopted:

The researcher has used doctrinal method for the present research work. Primarily, data for the research is secondary one comprising various reports, research papers, documents, judgments of Supreme Court and High Courts.

What is domestic violence?

Declaration on the Elimination of Violence against Women defines 'violence against women' means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.[3] Violence against women shall be understood to encompass, but not be limited to, the following:

(a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

(b) Physical, sexual and psychological violence occurring within general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.[4]

CEDAW attempted to define all types of violence against women belonging to all classes, committed within and out of four walls.

Domestic violence under DV Act:

In India, for the first time attempt was made to recognize violence against women in personal laws in the form of cruelty by husband as a ground for divorce. The Hindu Marriage Act, the Shariat Act, Indian Divorce Act and

[1] Beijing Platform for Action, 1995, Paragraph 89 & 92.
[2] RajaramPanwari vs. Asha Panwari (Dr.), 2010(88) AIC 547 (M.P.)
[3] CEDAW, Article 1
[4] CEDAW, Article 2

such personal laws mention grounds available to husband as well as wife and includes cruelty as one ground which encompasses in it many acts and omissions committed by either party to marriage. However such acts did not amount to offence until S.498-A was introduced in IPC in the year 1984. All these laws were found inadequate in providing suitable and convenient remedies to victim women. Therefore, DV Act was enacted in 2005 which defines domestic violence as,any act, omission orcommission or conduct of the respondent shall constitute domestic violence in case it -

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental orphysical, of the aggrieved person or tends to do so and includes causing physical abuse, sexualabuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or anyother person related to her to meet any unlawful demand for any dowry or other property orvaluable security; or

(c) 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

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I.-For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain,harm, or danger to life, limb, or health or impair the health or development of the aggrievedperson and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades orotherwise violates the dignity of woman;

(iii) "verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard tonot having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is

interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person isentitled under any law or custom whether payable under an order of a court or otherwise orwhich the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any,stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable,

valuables, shares, securities, bonds and the like or other property in which the aggrieved personhas an interest or is entitled to use by virtue of the domestic relationship or which may bereasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrievedperson is entitled to use or enjoy by virtue of the domestic relationship including access to theshared household.

Explanation II.-For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence" under this section, the overall factsand circumstances of the case shall be taken into consideration.[5]

The section endeavours to encompass all types of acts or omissions. The Act not only protects victims of marital relations as well as persons sharing households and hence the scope of the Act is very wide.

Remedies under the DV Act:

The Act defines domestic violence and also affords corresponding reliefs and remedies to the victims of domestic violence. The Act takes into account circumstances that are frequently faced by women in domestic life and offers remedies accordingly such as right to reside in shared household, protection orders, residence orders etc. and these are discussed in the present research paper and are as follows,

S. 17-Right to reside in a shared household-

(1) Every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

Respondent here means person against whom some relief under the Act is claimed. Aggrieved person i.e. woman cannot be evicted from the residence and she can be granted rental money in lieu of residence.[6] However, wife does not have right of residence in house held by father-in-law and or mother-in-law.[7] Women do not have right to property and when they try to protest violence, they are evicted from home and they do not get support from parental home. Hence many times they remain silent victims of violence. Taking into account this situation of women, the law has made provision of residence so that women would come forward to tackle the problem of violence.

S. 18-Protection orders-

Protection orders may be passed by Magistrate and prohibit the respondent from,

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is achild, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, includingpersonal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed byboth the parties,

[5]Section 3 DV Act, 2005

[6]*Umesh Sharma vs. State,* 2010(89) AIC 654(Del)

[7]*SardarMalkiat Singh vs. Kanwaljit Singh,* 2009 AIR (NOC) 515 (Del.)

jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f)causing violence to the dependents, other relatives or any person who give the aggrieved

person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

S.19-Residence orders- the Magistrate may pass a residence order and may

(a) restrain the respondent from dispossessing or disturbing thepossession of the aggrieved person from the shared household;

(b) direct the respondent to remove himself from the shared household;

(c) restrain the respondent or any of his relatives from entering any portion of the shared

household in which the aggrieved person resides;

(d) restrain the respondent from alienating or disposing off the shared household or

encumbering the same;

(e) restrain the respondent from renouncing his rights in the shared household except withthe leave of the Magistrate; or

(f) direct the respondent to secure same level of alternate accommodation for the aggrievedperson as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

The section again attempts to protect the women from being left homeless. Residence order passed under this section for facilitating residence of wife is proper if wife has resided in building belonging to father-in-law for short duration and it is immaterial whether husband has legal or equitable interest in it.[8]

S. 20-Monetary reliefs-

(1) The Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the controlof the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

Wife who is residing separately from husband and earning from tuitions is also entitled to receive monetary relief if husband is preventing her from giving tuitions.[9]

S. 21-Custody orders-

The Magistrate may grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent:

Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

The intention to incorporate this provision is that the children of the parties should not suffer because of follies committed by their parents in their matrimonial ties.[10] The decision on custody of minor has to be consistent with the wishes of minor, whenever it is possible particularly when the minor is old enough to make an intelligent preferences.[11]

22. Compensation orders-

In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

Conclusion:

What is remarkable in case of domestic violence is that violence is committed by the persons who are entrusted with the protection of women. Similarly women also think that violence by husband is not something wrong but a socially accepted matter. Therefore simply making provisions of remedies or reliefs to women would not suffice or serve protection of women. There is need to create social awareness about rights of women since schooling education. There is need to elevate the status of women in society which will automatically help in reducing instances of domestic violence.

References:

1. RajaramPanwari vs. Asha Panwari (Dr.), 2010(88) AIC 547 (M.P.)
2. Umesh Sharma vs. State, 2010(89) AIC 654(Del)
3. SardarMalkiat Singh vs. Kanwaljit Singh, 2009 AIR (NOC) 515 (Del.)
4. Prabhakaran vs. State of Kerala, AIR 2009(NOC)1017(Ker.)
5. Ann Menezes vs. Shahajan Mohammad, 2010 CriLJ 3592 (Bom)
6. Gulab Chand vs. Sampati Devi, 1988(2)HLR 44 (J & K)
7. Ayesha Bhatia vs. Ajay R. Bhatia, AIR 1988 Del. 149s

⌘

[8] *S. Prabhakaran vs. State of Kerala,* AIR 2009(NOC)1017(Ker.)

[9] *Ann Menezes vs. Shahajan Mohammad,* 2010 CriLJ 3592 (Bom)

[10] *Gulab Chand vs. Sampati Devi,* 1988(2)HLR 44 (J & K)

[11] *Ayesha Bhatia vs. Ajay R. Bhatia,* AIR 1988 Del. 149s