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Protective laws against domestic violence

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Abstract

The Vienna accord of 1994 and the Beijing declaration and platform for action (1995) have acknowledged that domestic violence is undoubtedly a human rights issue. The United Nations committee on convention on elimination of all forms of discrimination against woman in its general recommendations has recommended that state parties should act to protect woman against violence of any kind, especially that occurring within the family. The phenomenon of domestic violence in India is widely prevalent but has remained invisible in the public domain. The civil law does not address this phenomenon in its entirety. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian penal code. In order to provide a remedy in the civil law for the protection of woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society the protection of woman from domestic violence bill was introduced in the parliament.

Keywords: Violence, Woman, Penal Code, Offence, Protection, Discrimination, Remedy, Phenomenon, Victims, Accord

Introduction

The protection of woman from domestic violence bitt. 2005 having been passed by lok sabha on 24 Aug. 2005 and by the Rajya sabha on 29 Aug. 2005 received the assent of the president 13 september 2005 and came on the statute book as THE PROTECTION OF WOMAN FROM DOMESTIC VIOLENCE ACT, 2005 (ACT 43 OF 2005).

Violence and abuse scars all kinds of people every day all over the globe, irrespective of culture, race class or age. Psychologists have always believed that domestic abuse is dictated by gender equation in most cases, and women are usually more vulnerable to violence in the domestic set up. Abuse against a woman can be mental, physical, emotional, sexual, economic, social or spiritual. The abuser can be a family member, a current or past spouse, someone one is dating, boyfriend, an acquaintance or a stranger.

India's national crime record's bureau has recorded a crime against women in every three minutes in India. Every six hours, a young married woman is found beaten to death, burnt or driven to suicide, according to police officials. In spite of the enormity of the problems related to crimes against women in India, there was no specific legislation to control the threat of abuse or actual abuse for women in their homes. The new domestic violence bill attempts to meet this vacuum by including "actual abuse or the threat of abuse whether sexual, physical, economic or emotional. The law is specially designed to offer protection to wives or live-in-partners, from violence perpetrated by husbands and in-laws or live-in-partners and relatives of live-in-partners. Punishment ranges from a fine up to 20,000 to a jail term up to one year. This landmark new law, offering protection to Indian women against domestic violence - has become fully functional in India.

The protection of women from domestic violence act, 2005-is path breaking in many ways. The act was notified on October 25, of the year 2006. It's all-encompassing definition of domestic violence as "all forms of physical, sexual, verbal, emotional or economic abuse" is very significant. The civic solutions offered to abused women via this act are unique. Before this act came into being women could only seek redress through section 498 A of the penal code to file a complaint against a violating partner. The older law did not give the woman a right to stay on in her matrimonial home or demand maintenance. The new bill has taken

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justice for women beyond the precincts of theory and made it practicable. This section lays down the duties of a police officer, protection officer, service provider and the magistrate to inform the aggrieved person of her right to make an application for one or more reliefs under the Act, the availability of services of service providers and protection officers, her right to avail free legal services under the legal services authorities Act, 1987 and her right to file a complaint under section 498A of the Indian penal code, wherever relevant. It is also envisaged that this section shall not relieve any police officer from his duty to proceed in accordance with law on receipt of information as to commission of a cognizable offence.

The section seeks to provide that the person in charge of the medical facility shall be bound to provide medical aid to the aggrieved person if requested by her or on her behalf a protection officer or a service provider.

This section empowers the magistrate to direct at any stage of the proceedings, the respondent or the aggrieved person either singly or jointly to undergo counseling with any member of a service provider. The member of the service provider providing the counseling shall possess such qualification and experience as may be laid down by the central government, by rules. Where any counseling has been ordered under this section, the magistrate shall fix the next date of hearing of the case within a period not exceeding two months.

The section provides for proceedings to be held in camera at the discretion of the magistrate or if either party to the proceedings so desires.

This section lays down that irrespective of any contrary provision in any other law, every woman in a domestic relationship shall have the right to reside in the shared household and the aggrieved person shall not be evicted or excluded from the shared household by the respondent except in accordance with the procedure established by law.

The section empowers the magistrate to pass orders for grant of monetary relief to the aggrieved person from the respondent to meet the expenses incurred and losses suffered including loss of earnings, medical expenses, loss to property and maintenance section 125 of the code of criminal procedure, 1973 or any other law for the time being in force.

This section provides that any protection officer who fails or refuses to discharge his duties as directed by the magistrate in the protection order shall be punished with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

Protection officer can be prosecuted, up to 1 year imprisonment or with a fine up to Rs. 20,000 or both for failure of his duties.

Domestic violence can never be eliminated from society unless refuses to tolerate it. This will require an internal change in the basic nature of society world over, beginning with the recognition of the worth of every human being as an individual. If the law does not buck up in terms of implementing punishment on those who violate others within the sacred walls of the institution called family and home, the weaker will continue to be violated and abused by the stronger-physically, mentally, materially and spiritually.

References

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