

HUMAN RIGHTS OF WOMEN IN INDIA WITH SPECIAL REFERENCE TO PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE

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Abstract : During the war of independence due to great efforts of Ramkrishna Mission, Bramho Samaj, Prarthana Samaj and the like, Indian women became aware about solidarity and started thinking about change and revolution. A few women like Swaran Kumari Devi, Sarojini Naidu, Mrs. Srala Devi, Pandit Ramabai, Maharani Tapasvini Sunanda and the like had started thinking about (a) status of women in Indian society, (b) social reforms, (c) women's education and (d) change of status of women in India. Under the Constitution of India all fundamental rights and other constitutional rights are guaranteed to women as well as men equally. However, article 15(3) guarantees special protection to women in India. Following the Universal Declaration of Human Rights, 1948 and the Convention on Elimination of all forms of Discriminations against Women, 1979 and 2000; the resolution on Elimination of Atrocities against Women in the year 1993, the Vienna Declaration on equality of male and female and other International Conventions, the Indian Parliament enacted and passed the Protection of Human Rights Act, 1993 as well as enacted and amended several statutes, the most significant being the Protection of Women from Domestic Violence Act, 2005 and very recently the Act of 2013 for the protection of human rights of women. Indian judiciary also has shown their craftsmanship by delivering several judgments for protection of rights of women, their security, liberty, dignity, chastity, happiness and welfare. However, there are some fields left out for the society to act for the protection of women from all forms of atrocities and violence. Along with legal reform, there is a need for social awareness and more specifically every woman should identify and claim their right to be protected. Eradicate patriarchy, equality will play freely and then we can achieve gender justice.

I. Introduction : In the beginning of 19th century Raja Ram Mohan Roy, Swami Sahajanand, Ishwar Chandra Vidya Sagar, Sri Dayanand Saraswati, Mahadev Govind Ranade, Swami Vivekanand and others had started political and social movements with the aim of social change and for the protection of human rights of women. Raja Ram Mohan Roy is well known for his revolutionary activities in political, social, economic, literary, cultural and religious fields.

Indian freedom fighters started thinking about change of Dark Age of 18th century. In the 18th century under the excuse of religion there were customs of child marriage, child killing, and practice of sati, torture to women since their childhood within the family and outside in society.

With the aim of social reform Raja Ram Mohan Roy established Bramho Samaj in the year 1828, 20th August and revolted against the practice of Sati. Likewise, Swami Vivekananda also worked hard for welfare of women. Iswar Chandra Vidya Sagar had started the movement for the Remarriage of Widows in India on the basis of which the British Government passed a Law favoring Remarriage of Widows in the year 1856. Dr. Annie Beasant, Sister Nivedita and Pritilata Wadaker's names must also be recalled at this juncture for their contributions in social reforms and freedom movements.

During the war of independence due to great efforts of Ramkrishna Mission, Bramho Samaj, Prarthana Samaj and the like, Indian women became aware about solidarity and started thinking about change

and revolution. A few women like Swaran Kumari Devi, Mrs. K. Ganguli, Sarojini Naidu, Mrs. Sarla Devi, Devi Rani, Pandit Ramabai, Maharani Tapasvini Sunanda and others had started thinking about (a) status of women in Indian society, (b) social reforms, (c) Women's education and (d) change of status of women in India. As part of freedom movement Indian women gave away jewelries and fancy clothes as well as took part in straggle for Home Rule Movement, Satyagraha and the like. Vijyalaxmi Pandit was jailed for her active participation in the year 1940. Many women joined Netaji Subhash Chandra Bose's Azad Hind Fauj with the leadership of Dr. Laxmi Saigal.

Gradually women in India started to oppose the Rule made by society against them. They started to identify their rights as human being. Indian Women realised that they too have certain basic, inherent and sacrosanct rights which are inherent by birth as human being. These are not given by the state rather the state only guarantees certain rights as fundamental human rights as under Indian Constitutional law, the Human Rights Act and other statutes. Women should be treated equally with men in family, community as well as society.

However, to achieve equal rights and protection in 21st century, women enjoy certain special protection but it is to bring them at equal footing. Because, only equals can be treated and protected equally otherwise if unequal are treated equally then again it will result in more subordination and domination. However,

these rights are not unrestricted as we know rights without restrictions may destroy society as it may lead anarchy. Therefore, in our society there is need of gender equality and protection of rights of women equally with men.

li. Protection Of Rights Of Women In India

Rights include right to life, liberty, security and the pursuit of happiness. Earlier these were known as natural rights then as Human Rights and also fundamental rights under Indian Constitutional Law. As fundamental or basic rights they are those rights which must not be taken away by any legislature and which are guaranteed under the Constitution. As natural rights these are seen as belonging to men and women by their very nature and these rights should be shared by all men or women in the world.

Under the Constitution of India all fundamental rights and other constitutional rights are guaranteed to women as well as men equally. However, article 15(3) guarantees special protection to women in India. Following the Universal Declaration of Human Rights, 1948 and Convention on Elimination of all forms of Discriminations against Women, 1979 and 2000; the resolution on Elimination of Atrocities against Women in the year 1993, the Vienna Declaration on equality of male and female and other International Conventions, the Indian Parliament enacted and passed the Protection of Human Rights Act, 1993 and enacted as well as amended several statutes, such as, the Dowry Prohibition Act, 1961; the Immoral Traffic (Prevention) Act, 1986; the Maternity Benefits Act, 1961; the Equal Remuneration Act, 1976; the Medical Termination of pregnancy Act, 1971; the Pre-natal Diagnostic (Regulation and Prevention of Misuse) Act, 1994; the Divorce Act, 1961; Codified Hindu Laws, Labour Laws which are known as social security legislations and amended several provisions of the Indian Penal Code, e.g., sections 376A - E, 498A, 304B. The most significant being the Protection of Women from Domestic Violence Act, 2005 and very recently the Act of 2013 for the protection of human rights of women.

Indian judiciary also has shown their craftsmanship by delivering several judgments for protection of rights of women, their security, liberty, dignity, chastity, happiness and welfare. However, there are some fields left out for the society to act for the protection of women from all forms of atrocities and violence. Science and technology has progressed and we are living in high-tech society with Wi-Fi and World Wide Web. Therefore, our social setup and psychology should also change to give women equal space to react, enjoy, express and live the life with liberty and safety.

lii. The Protection Of Women From Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act was enacted to provide more effective protection of the rights of women guaranteed under the Constitution to those who are victims of violence of any kind occurring within family and for matters connected therewith or incidental thereto.

(i) Object and reasons: The rationale behind the statute is that domestic violence is undoubtedly a human right issue and serious deterrent or threat to development of human being. The Vienna Convention of the year 1994, the Beijing Declaration and the United Nations Committee for Convention on Elimination of all forms of Discriminations against Women (CEDAW) in the year 1979 in its general recommendation has stated that state parties should act to protect women against violence of any kind occurring within the family specially.

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. However, there was no civil remedy against domestic violence. Therefore, it was proposed to enact this Act in view of rights guaranteed under articles 14, 15 and 21 of the Indian constitution to protect women from being victims of domestic violence and to prevent such violence in society.

(ii) Domestic Relationship: The Act provides protection to women who are or have been in relationship, lived together in shared household, related by marriage or adoption, in family or in joint family. They may be sister, widow and mother, single or living with the abuser, are entitled to get legal protection in case of abuse, violence or atrocities.

Section 2(f) of the Act defines the term 'Domestic Relationship'. It means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

(iii) Shared Household: As per section 2(s) of the said Act, the term shared household means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted by the aggrieved person and the respondent either jointly or singly and have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household. Section 17 deals with the right of victim women to reside in a shared household. According to section 2(a) of the Act aggrieved person may be any woman who is or has been in a domestic relationship with the respondent and who alleges to have been

subjected to any act of domestic violence by the respondent. Respondent may be any adult male person against whom the aggrieved woman has sought any relief against domestic violence or any male or female relative of husband as provided under section 2(q) of the Act.

(iv) Domestic Violence: Section 3 of the Act specifically defines the term domestic violence. It provides that any act, omission or commission or conduct of the respondent shall constitute domestic violence in any of the following situations: (a) 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 and economic abuse. (b) Harasses, harms, injures or endangers the aggrieved woman with a view to coerce her or any other person related to her to meet any unlawful demand for dowry or other property or valuable security. (c) Has the effect of threatening and the woman or her relative by any conduct mentioned in clauses (a) or (b) above. (d) Otherwise injures or causes harm, whether physically or mentally to the aggrieved woman.

Physical Abuse: It means any act or conducts 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 aggrieved woman and also includes assault, criminal intimidation and criminal force.

Sexual abuse: It includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of women. Such conducts are violation of right to life and personal liberty guaranteed under article 21 of the Indian Constitution as expanded by the judgment of the Indian Supreme Court in *Maneka Gandhi v. Union of India*. In *Bodhisatwa Goutam v. Subhra Chakraborty*², 1995, the Calcutta High Court awarded compensation to the victim under article 21 of the Constitution and interpreted article 5(9) of the International Convention on Civil and Political Rights, 1966. In that case the accused proposed the victim to marry socially and undergone marriage by putting sindur on her forehead and had sexual relation several times. He also forced the victim for miscarriage several times. After all these conducts the accused refused her to marry and tried to deny everything. The Court treated the case under sections 375, 376, 312, 316, 493 – 498A and specifically offense relating to fraudulent marriage under the Indian Penal code and imposed punishment accordingly. Not only that, *Smt. Sudesh Jhaku v. K.C.J. and others (UP)*³ reported in the year 1998 where father with his friends sexually abused his minor girl and the accused were arrested with the help of mother of victim child and the accused were punished under sections 376 and 377 of the Indian

Penal Code, 1860. In that case, this little girl used to be taken by her father to his office and from there to a hotel room in or around the Pavilion restaurant. The others to accompany them were the persons named above. Enclosed there, they would consume alcohol, watch what are generally known as 'blue films' and revel in sex orgies. And during those unclothed games of raw flesh, KCJ would make his own daughter consume alcohol, remove her clothes, and thrust his fingers in her vagina and anus. If the child is to be believed, she was not safe even within the four walls of the house she called her home. This is how she describes her experience there.

Verbal and Emotional Abuse: It includes (a) insults, ridicule, humiliation, name calling and insults or ridicule specially for not having a child or a male child. (b) Repeated threats to cause physical pain to any person in whom she is interested. It is a personal right of a human being which includes the right of reputation protected under right to life to live with dignity.

Economic Abuse: It includes (a) deprivation of all or any economic or financial resources to which that woman is entitled under any law or custom or according to the order of court or otherwise or which she requires out of necessity including, but not limited to, household necessity for her and her children, if any, Stridhan, Property jointly or separately owned by that woman, 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 that woman has an interest or she is entitled to use by virtue of the domestic relationship or which may be reasonably required by her or her children or her stridhan or any other property jointly or separately held by her. (c) Prohibition or restriction to continued access to resources or facilities which she is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.⁴

Iv. Rights Which Are Protected Under The Act, 2005.

(a) Right to Share house: Under section 17 the Act provides right to reside in a shared household. (b) Protection Order: Under section 18 she can get protection order from the magistrate. According to section 31 of the Act any breach of protection Order by the respondent shall be an offence punishable with imprisonment up to 1 year or with fine up to rupees 20,000/- or with both. The respondent also can be punished under section 498A of the Indian Penal Code and the Dowry Prohibition Act, 1961 along with such punishment. For not discharging the duty by the protection officer the penalty may be imposed up to 1 year imprisonment or with fine up to rupees 20,000/- or with both; except when it was

caused or action was taken by the Protection Officer in good faith under section 35. (c) Residence order under section 19. (d) Right to information: Under section 5 she can get all necessary information from court and protection officer. (e) Right to shelter in a home under section 6. (f) Right to Health: Right to medical facilities and treatment under section 7. (g) Access to justice: Under section 12 the victim can file application to the magistrate and under section 29 appeal to the Session Court within 30 days. (h) Right to counseling under section 14. (i) Right to free legal aid with financial aid under section 10. (j) Monetary relief: Under section 20 of the Act the victim can get adequate, fair and reasonable monetary relief considering loss of earning, medical expenses, maintenance and other necessities. (k) Custody order for child under section 21. (l) Right to compensation under section 22. These are the rights which provide protection to women under the Protection of Women from Domestic Violence Act, 2005.

V. Judicial Approaches

In *Bodhisatwa Goutam v. Miss Shubhra Chakraborty*² complainant was a student of accused in a college of W.B. According to the first information report accused cohabited with victim frequently giving false assurance of marriage and when she exerted pressure for marriage, he underwent false marriage in a temple putting sindur/vermilion on her forehead and accepted as her wife but later on refused to recognise her before his relatives and parents. He also compelled her for abortion more than twice putting his false name at the Nursing Home. The victim claimed compensation under Article 21 of the Indian Constitution. Justice Kuldip Singh and Justice S. Saghir Ahmed of Supreme Court of India held that accused must pay Rs. 1,000/- per month as interim compensation during pendency of Criminal case with arrears from the date of filing. The case was under sections 312, 420, 493, 496, 498A of Indian Penal Code, 1860. Rape is crime against basic Human Rights of Women' and violation of victims most cherished right under article 21. As we know under article 21, life and personal liberty, does not mean only existence of life but also includes every aspects of life which are essential for free and full enjoyment of life and personal liberties. In other words it includes right to live with human dignity, chastity and against sexual or other harassment which cause harm to person or property. It is the prime duty of the state to act as parent patria to protect our basic, sacrosanct and fundamental rights. We can refer here Mr. Justice S. Saghir Ahmed who observed that unfortunately a women in our country, belongs to a class or group of society who is in that position due to several social barriers and impediments. Therefore, they are victims of tyranny

at the hands of men with, whom under constitution, they enjoy equal status.

In our Indian culture, women must be treated as mother, sister, daughter and wife. They should have the right to live with equal status, dignity and liberty. It is also our fundamental duty to obey and respect these basic rights of women. Sexual harassment or rape is a malady in our society due to which moral thinking can be perverted. It will destroy entire psychology of victim pushing her into deep emotional crises. Therefore, women's rights must be protected carefully. According to section 114A of the Indian Evidence Act, the court can presume that women who are the victim of rape had not consented and that the offence was committed against her will.

In *Arun Pramod Shah v. Union of India*⁵ case in which the Constitutionality of section 17 of the Protection of Women from Domestic Violence (PWDV) Act, 2005 was challenged on the ground that it threatened or dismissed the right of legally wedded wives as it protects the right of every women in a domestic relationship to reside in the shared household whether or not she has any right, title or beneficial interest in the same. Here the rights of women in such domestic relationship includes one who is common law wife or mistress in accommodative but against the legal wife. The challenge was rejected by the Delhi High Court. Vikramjit Sen, J. observed that section 17 of the PWDV Act was path-breaking as it introduces the right of every woman in a domestic relationship to reside in the shared household irrespective of her right, title and beneficial interests. The Court also held that it seems to us that it is not unconstitutional for parliament to provide for protection to a woman in a relationship akin to marriage, along with and juxtaposed to the protection given to wives and legitimate children. However, equal treatment should be given to wife as well as a woman who has been living with a man as his mistress or common law wife. Equal treatment to both does not in any manner derogate from the sanctity of marriage.

*Vimlaben A. Patel v. V. A. Patel*⁶ case was under the Hindu Adoptions and Maintenance Act, 1956, where the Supreme Court held that in the absence of husband the women can get maintenance. The father-in-law has liability to maintain but Mother-in-Law has no liability to maintain daughter-in-law. Here Court referred the PWDV Act and held that right to resident extend to joint property of the family where husband has the share. The decision of *M. Palani v. Meenakshi*⁷ case is also relevant in this context.

In *Dennison Paulraj v. Mrs. Mayawinola*⁸ case the respondent was the wife of petitioner. She had filed an affidavit that she was destitute and was deprived from her matrimonial home at mid-night when she

had no roof or shelter to reside. Judicial Magistrate passed the residence order. Then the petitioner locked the residential house. The Magistrate passed another order giving direction to police to break the lock and allow the respondent women to reside in the house. Before the High Court the husband argued that the house is not owned by him rather it is owned by his mother so it will not come under section 17 as 'shared household'. The respondent wife then contended that the house was and is actually of her husband but in order to deprive her from shared household her husband transferred it in his mother's name who is also the petitioner No -2. Herein the Court referred Supreme Court's decision in *S. R. Batra v. Tarun Batra*⁹ case and took a deferent approach that if court allows it then every husband will simply alienate his property in favour of somebody else and after that when such dispute will arise then he can take a stand that the house where they last resided is not a shared household. And therefore, the wife cannot be entitled to seek for residence right in the shared household. The Court also held that the husband locked the house and walked off and there was deprivation of the right of women and violation of protection order passed by the court under the Act 2005.

In *Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others*¹⁰, while dealing with the value of reputation, though the case was on departmental enquiry, a two-Judge Bench held that the expression 'life' has a much wider meaning. Where the outcome of a departmental enquiry is likely to adversely affect reputation or livelihood of a person, some of the finer graces of human civilisation, which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures. In this context one can recall the famous words of Chapter II of *Bhagwad-Gita*: *Sambhavitasya Cha Kirti Marnadati Richyate*.

In *Mehmood Nayyar Azam v. State of Chhattisgarh and others*¹¹ the Supreme Court held that the reverence of life is inseparably associated with the dignity of a human being who is basically divine, not servile. A human personality is endowed with potential infinity and it blossoms when dignity is sustained. The sustenance of such dignity has to be the superlative concern of every sensitive soul. The essence of dignity can never be treated as a momentary spark of light or, for that matter, a brief candle, or a hollow bubble. The spark of life gets more resplendent when man is treated with dignity sans humiliation, for every man is expected to lead an honourable life which is a splendid gift of creative intelligence. When a dent is created in the reputation, humanism is paralysed. In *Vishwanath Agrawal v. Sarla Vishwanath Agrawal*¹² while dealing

with the aspect of reputation, this Court has observed that reputation is not only the salt of life, but also the purest treasure and the most precious perfume of life. It is a revenue generator for the present as well as for the posterity. In *Om Prakash Chautala v. Kanwar Bhan and others*¹³ the Supreme Court of India, although in a different context, observed that personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. The International Covenant on Civil and Political Rights, 1966 recognises the right to have opinions and the right to freedom of expression under Article 19 is subject to the right of reputation of others. In *Kiran Bedi v. Committee of Inquiry and another*¹⁴ the Apex Court held that right to the enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty, and property.

In *Indra Sarma v. V. K. V. Sarma*¹⁵ the Court held that 'Domestic Violence' is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India, when a woman is subjected to cruelty by husband or his relatives. The Court also held that marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the 'Consortium Omnis Vitae' which obliges spouses to live together, afford each other reasonable marital privileges, rights, honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage as an institution has great legal significance and various obligations as well as duties

flow out of marital relationship, as per law, in the matter of inheritance of property, successions, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship. Marriage and the family are social institutions which have vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage, therefore, is to enter into a relationship that has public significance as well.

In *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik and Another*¹⁶ case the Petitioner happened to be the husband of respondent and alleged to be the father of girl child Netra respondent no. 2. The marriage between them was solemnised on 30th of June, 1990 at Chandrapur. Wife filed an application for maintenance under Section 125 of the Code of Criminal Procedure, but the same was dismissed by the learned Magistrate by order dated 10th December, 1993. Thereafter, the wife resorted to a fresh proceeding under Section 125 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') claiming maintenance for herself and her daughter, inter alia, alleging that she started living with her husband from 20th of June, 1996 and stayed with him for about two years and during that period got pregnant. She was sent for delivery at her parents' place where she gave birth to a girl child, the respondent no. 2 herein. The Petitioner husband resisted the claim and alleged that the assertion of the wife that she stayed with him since 20th of June, 1996 is false. He denied that respondent no. 2 is his daughter. After 1991, according to the husband, he had no physical relationship with his wife. The learned Magistrate accepted the plea of the wife and granted maintenance. The petition under Section 482 of the Code, challenging those orders preferred special leave petition. The Court passed the order on 10th December, 2011 that the husband had challenged the paternity of the child and had claimed that no maintenance ought to have been awarded to the child. The petitioner had also applied for referring the child for DNA test, which was refused. He again filed the case for DNA test and was also directed to deposit all dues, both arrear and current, in respect of the maintenance awarded to the wife and child to enable

the court to consider the prayer for holding of DNA test. Such deposit having been made on 3rd January, 2011, the Court had agreed to allow the petitioner's prayer for conducting DNA test for ascertaining the paternity of the child. The report of the DNA Test conducted at the Regional Forensic Science Laboratory, State of Maharashtra, Nagpur-12, indicates that the petitioner is not the biological father of the respondent No. 2. On the prayer made on behalf of the respondents for a re-test, the prayer was allowed. The Central Forensic Science Laboratory, Hyderabad submitted its report of re-test and on that basis opined that the appellant, Nandlal Wasudeo Badwaik can be excluded from being the biological father of respondent no. 2. But the respondent contended that appellant having failed to establish that he had no access to his wife at any time when she could have begotten respondent no. 2, the direction for DNA test ought not to have been given and the result of such a test is fit to be ignored. In support of the submission they placed relevant judgments of honourable Court in *Goutam Kundu v. State of W.B.*¹⁷, that it requires the party disputing the paternity to prove non-access in order to dispel the presumption; access and non-access mean the existence or non-existence of opportunities for sexual intercourse; it does not mean actual cohabitation. (i) That courts in India cannot order blood test as a matter of course. (ii) Wherever applications are made for such prayers in order to have roving inquiry, the prayer for blood test cannot be entertained. (iii) There must be a strong prima facie case in that the husband must establish non-access in order to dispel the presumption arising under Section 112 of the Evidence Act. (iv) The court must carefully examine as to what would be the consequence of ordering the blood test; whether it will have the effect of branding a child as a bastard and the mother as an unchaste woman. (v) No one can be compelled to give sample of blood for analysis. In *Banarsi Dass v. Teeku Dutta*¹⁸ case the Court held, it should be remembered that section 112 of the Evidence Act was enacted at a time when the modern scientific advancements with deoxyribonucleic acid (DNA) as well as ribonucleic acid (RNA) tests were not even in contemplation of the legislature. The result of a genuine DNA test is said to be scientifically accurate. But even that is not enough to escape from the conclusiveness of section 112 of the Evidence Act e.g. if a husband and wife were living together during the time of conception but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. This may look hard from the point of view of the husband who would be compelled to bear the fatherhood of a child whose father he is not. But even in such a case the law leans in favour of the innocent child from

being bastardised if his mother and her spouse were living together during the time of conception. Hence the question regarding the degree of proof of non-access for rebutting the conclusiveness must be answered in the light of what is meant by access or non-access as delineated above.

*Bhabani Prasad Jena v. Orissa State Commission for Women*¹⁹ held that when there is apparent conflict between the right to privacy of a person not to submit himself forcibly to medical examination and duty of the court to reach the truth, the court must exercise its discretion only after balancing the interests of the parties and on due consideration whether for a just decision in the matter, DNA test is eminently needed. DNA test in a matter relating to paternity of a child should not be directed by the court as a matter of course or in a routine manner, whenever such a request is made. The court has to consider diverse aspects including presumption under Section 112 of the Evidence Act; pros and cons of such order and the test of 'eminent need' whether it is not possible for the court to reach the truth without use of such test.

So, it is evident that a child born during the continuance of a valid marriage shall be a conclusive by presumed that the child is a legitimate child of the man to whom the lady giving birth is married. The provision makes the legitimacy of the child to be a conclusive proof, if the conditions aforesaid are satisfied. It can be denied only if it is shown that the parties to the marriage have no access to each other at any time when the child could have been begotten. Here, in the present case, the wife had pleaded that the husband had access to her and, in fact, the child was born in the said wedlock, but the husband had specifically pleaded that after his wife left the matrimonial home, she did not return and thereafter, he had no access to her. The wife has admitted that she had left the matrimonial home but again joined her husband. Unfortunately, none could give any finding with regard to this plea of the husband that he had or had not any access to his wife at the time when the child could have been begotten. Therefore, the provisions of Section 112 of the Evidence Act conclusively prove that respondent No. 2 is the daughter of the appellant. But, 'Truth must triumph' is the hallmark of justice. And in this case Court hastened to add that in none of the cases referred to above; this Court was confronted with a situation in which DNA test report, in fact, was available and was in conflict with the presumption of conclusive proof of legitimacy of the child under section 112 of the Evidence Act. The court in no way advanced the case of the respondents and allowed the appeal setting aside the impugned judgment so far as it directs payment of maintenance to respondent no. 2. However, the Court directed that the payments

already made shall not be recovered from the respondents.

Vi. Conclusion With Suggestions

The Protection of Women from Domestic Violence Act, 2005 is the law to protect human rights of women. We are happy with the Law as it provides full protection to the so called subordinate section of our society. Threat or coercion to abuse her is not always required to prove rather threat or coercion should be proved even to cause any harm to a person to whom she is interested. It may cause by deprivation of her right to property, share of household, valuables, stridhan and the like.

Any insult or humiliation for not having child or a male child, for not being so beautiful or not having good name or surname whether verbal or written should be treated as emotional violence.

The respondent should be the adult male or a relative of the husband or the male partner or husband. That means any female relative of her husband may also be the respondent.

Any harassment or harm to the aggrieved women or her relative for the demand of dowry will also be treated as domestic violence. So, this Act also covers the objects of the Dowry Prohibition Act, 1961. The term dowry may be defined as under section 2 of the Dowry Prohibition Act, 1961 and sections 304B and 498A of the Indian penal Code will be applicable for punishment purpose in case there is evidence of dowry death, bride burning or any unnatural death.

The Protection of Women from Domestic Violence Act, 2005 covers certain provisions of the Indian Penal Code, Hindu Laws, the Medical Termination of Pregnancy Act, 1971 (sections 312 -316 of the Indian Penal Code for prohibition of miscarriage) and to prevent killing of female fetus in the womb we have the Pre-natal Diagnostic (Regulation and Prevention of Misuse) Act, 1994.

The Feminist associations are in favour of the Act, 2005 with the view that it will empower women victims and protect their rights. It is acceptable that for mental and emotional point of view this law protects the well-being of children and provides healthy environment to women in family and strengthen them within as they can think that there is special law to protect them from abusive members of their family. Therefore, this law can also be said to be a blessing for women in violent relationship. If this law is implemented properly, there will be no male dominance in our society and women will not be in subordinate status rather they can be in the supreme position legally.

However, the Act describes the term 'domestic violence' in expanded approach and it cannot be said to be a correct definition of the term. There is need of specific definition of the term 'DOMESTIC VIOLENCE' with the aim of gender equality to

achieve gender justice. Any aggrieved woman or anybody on her behalf can initiate the legal proceedings for the protection of that woman from domestic violence. The possible definition of the term may be as follows: any act, omission, commission or conducts which infringe the basic rights, i.e., right to life, safety, security, health, dignity and chastity of women, economic social rights and liberty can be treated as violence against women and while it is within family or incidental to family then it will be treated as domestic violence. It may be categorised as mental, physical, sexual, verbal, written, emotional or economic. The term 'insult' should be defined specifically with examples.

However, the prime object of this Law is to protect women victims and punish the guilty. The law should be implemented in such way that in any circumstances there should not be punishment to innocent sister, mother and father or other relatives of husband along with husband; because in urban area specially there is scope of misuse of this law. The law should be reformed to give protection to parents and relatives of husband when they are innocent.

To prevent and control domestic disputes this law is not adequate. It only imposes responsibilities on men and provides unrestricted rights to women. There is need of gender equality in true sense and protection to innocent victims and prevention of misuse of legal provisions. There is also need of specific, unambiguous definitions of every abuse and violence.

At the same time attitude of society towards women yet need to change. In domestic relation women and men should not behave like competitors rather they should share every joy and woe together with caring.

Women are identified as deprived and weaker section in society historically, therefore, there is need of proper respect to women and they should enjoy equal status in domestic relationship and even in the outer world.

Education, medical treatment, family planning, women empowerment and development should be available to every woman. They should be enabled to enjoy their rights and liberties freely and honestly. They should be aware about rights and ascertain their rights in every sphere in society. They should also ascertain their right to property from parents as well as husband.

Women may approach for relives to Village Panchayat, Jila Parisad, Municipal Corporation, police station, protection officer, Court, Women's Commission, Legal Aid Clinic, Social Welfare Officer, and Legal Services Authority.

Though we have Law, rules and regulations but then also we are evidence of Television news published that daughter was raped by father, girls were sexually harassed by husband and relatives of husband, even own brother, uncle and grandfather and the like. Then where do we stand! It is a Shame in civil society!

References

1. AIR 1978 SC 597.
2. (1996) 1 SCC 490.
3. CriLJ 1998 2428.
4. Explanation -I of section 3 of the Act, 2005.
5. 2008 INDLAW Del 1012.
6. (2008) 4 SCC 649.
- 7 AIR 2008 Mad 162.
8. 2008 INDLAW Mad 713.
9. (2007)3 SCC 169. Also in Annual Survey of Indian Law, Indian Law Institute, New Delhi.
10. (1983) 1 SCC 124
11. (2012) 8 SCC 1
- 12.[21] (2012) 7 SCC 288
13. IN THE SUPREME COURT OF INDIA, CIVIL APPELLATE JURISDICTION, CIVIL APPEAL NO. 1785 OF 2014,,
on 31 January, 2014. (Arising out of S.L.P. (C) No. 14409 of 2010).
14. (1989) 1 SCC 494
15. On 26 November, 2013.
16. IN THE SUPREME COURT OF INDIA, CRIMINAL APPELLATE JURISDICTION CRIMINAL APPEAL NO.24 OF 2014,
SPECIAL LEAVE PETITION (CRL.) No.8852 of 2008).
17. (1993) 3 SCC 418.
- 18.. (2005) 4 SCC 449, Also in Kamti Devi v. Poshni Ram, 2001 (5) SCC 311.
- 19.. (2010) 8 SCC 633,

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