Subject Name: Domestic Violence Act
Topic Name: Constitutional Perspective

Table of Content:-

International Standards..... 1
Legislative Intent..... 1
Protection of Women and Fundamental Rights..... 2

International Standards

The enactment in question, the Domestic Violence Act, was promulgated by Parliament under the authority granted by Article 253 of the Constitution. This constitutional provision empowers Parliament to enact laws to fulfill India's obligations under international treaties, conventions, and agreements.

In the case of the Domestic Violence Act, it was crafted in alignment with the recommendations of the United Nations Committee on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Specifically, the Act incorporates the provisions outlined in General Recommendation No. 19, which was adopted by the CEDAW Committee in 1992. This recommendation provides comprehensive guidelines and standards for addressing gender-based violence, including domestic violence, and outlines measures to ensure the protection and rights of women in such situations.

By drawing upon the principles and recommendations of CEDAW, the Domestic Violence Act reflects India's dedication to promoting gender equality, protecting women from violence, and upholding their fundamental rights in accordance with international standards. Thus, the Act stands as a pivotal instrument in the nation's efforts to combat domestic violence and advance the rights and welfare of women.

Legislative Intent

In the case of ***Indra Sarma v. V.K.V. Sarma*****,** the legislative intent behind the enactment of the Protection of Women from Domestic Violence Act, 2005 was thoroughly examined. It was

articulated that the primary objective of this legislation is to safeguard the rights of women who become victims of any form of violence within the familial environment.

By specifically targeting violence occurring within the confines of the family, the Act aims to offer comprehensive protection to women, ensuring their safety and well-being within the sanctuary of their own homes.

Similarly, the Madras High Court, in the case of ***Vandhana v. T. Srikanth***, reiterated the purpose of the Protection of Women from Domestic Violence Act, 2005. It described the Act as a mechanism designed to provide more effective protection for the rights of women enshrined in the Constitution, particularly those who endure violence within their family environment.

The Act's scope extends to addressing various forms of violence that women may encounter within the familial setting, encompassing physical, emotional, and psychological harm.

Essentially, both instances highlight the crucial significance of the Domestic Violence Act in safeguarding the safety, dignity, and constitutional rights of women enduring violence within their homes. Through the enactment of this legislation, the legislature sought to create a strong legal foundation that provides avenues for redress and safeguards for women experiencing such dire situations. Thus, the aim is to foster the creation of safer and fairer familial settings..

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Protection of Women and Fundamental Rights

The Statement of Objects and Reasons accompanying the enactment of the Protection of Women from Domestic Violence Act, 2005, explicitly underscores its alignment with the fundamental rights enshrined in Articles 14, 15, and 21 of the Constitution of India. Article 21, in particular, guarantees the right to life and liberty, emphasizing that these rights cannot be deprived except through a fair, just, and reasonable legal process.

The right to life, as interpreted by judicial precedents, encompasses a broad spectrum of rights, including the right to be free from violence. In the landmark case of ***Francis Coralie Mullin v. Union Territory Delhi, Administrator*** (AIR 1981 SC 746), the Supreme Court elucidated that any act that causes damage, injury, or interference with the use of any limb or faculty of an individual, even temporarily, falls within the purview of Article 21.

1. **Right to dignity:** The right to dignity, a fundamental aspect of human existence, has been underscored and upheld by judicial pronouncements, notably in the case of ***Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*** (AIR 1997 SC 152), where the Supreme Court reiterated that the right to life encompasses the right to live with human dignity. Drawing upon a plethora of preceding judgments, the Court affirmed the intrinsic connection between the right to life and the preservation of human dignity.

   Within the framework of domestic violence legislation, the right to dignity manifests in various forms. Firstly, it encompasses the right to be free from humiliating sexual acts, as emphasized by the Supreme Court. This aspect finds resonance in the definition of sexual abuse within the Protection of Women from Domestic Violence Act, 2005, which recognizes and condemns such acts perpetrated within the familial domain.

   Secondly, the right to dignity includes protection against emotional abuse and insults. Emotional abuse, a distinct and often overlooked form of violence, is expressly acknowledged within the Act as a form of domestic violence. This recognition is significant as it acknowledges the profound impact of psychological harm on an individual's sense of dignity and well-being. Notably, the Act's acknowledgment of sexual abuse inflicted by a spouse as a violation of a person's dignity is commendable, particularly given that such acts are not explicitly recognized as offenses under the Indian Penal Code (IPC). By including sexual abuse within the ambit of domestic violence, the Act fills a crucial gap in legal protection, ensuring that victims are safeguarded against all forms of abuse within the familial setting.

   The Protection of Women from Domestic Violence Act, 2005, stands as a testament to the State's commitment to upholding the inherent dignity and rights of individuals, particularly women, within the sanctity of their homes. Through its comprehensive provisions, the Act seeks to address and mitigate the multifaceted dimensions of domestic violence, thereby affirming the principle that every individual has the right to live a life free from degradation and humiliation.

2. **Right to be free of violence**: This right to be free from violence is expressly incorporated into the Protection of Women from Domestic Violence Act, 2005. The Act defines physical abuse as a form of domestic violence, encompassing acts or conduct that cause bodily pain, harm, or pose a threat to life, limb, or health, thereby impairing the overall health or development of the aggrieved person.

Additionally, the Act extends its protection to include similar acts of physical violence outlined in the Indian Penal Code, thereby ensuring a comprehensive framework for safeguarding women against various forms of violence.

By adopting such a broad and inclusive definition of domestic violence, the Act serves as a robust mechanism for upholding and protecting the fundamental right of women to live a life free from violence. It underscores the State's obligation to provide an environment where individuals, particularly women, can exercise their rights to life and liberty without fear of physical harm or coercion.

3. **Right to shelter**: The right to shelter, an essential component of the right to life, was affirmed by the judiciary in the landmark case of ***Chameli Singh v. State of U.P.*** **(1993 (22) ALR 37)**, wherein it was held that the right to life encompasses the right to shelter. This distinction was made in contrast to cases such as ***Gauri Shankar v. Union of India*** **(2003 (1) BLJR 535),** which pertained to the eviction of a tenant under a specific statute.

   Sections 6 and 17 of the Domestic Violence Act further reinforce this right by providing mechanisms to ensure shelter and protection for aggrieved parties. Section 6 mandates Protection Officers to provide accommodation to aggrieved parties lacking shelter upon request or otherwise. Additionally, Section 17 safeguards the right of the aggrieved party to continue residing in the shared household. These provisions aim to empower women to seek protection without the fear of being rendered homeless, thus ensuring their right to shelter is upheld.

   Article 14 of the Constitution contains the equal protection clause, which guarantees equality before the law and equal protection of the laws. While it prohibits class legislation, it allows for classification for legislative purposes. However, for a classification to be considered valid under Article 14, it must meet two criteria: first, it must be based on intelligible differentia, and second, there must be a rational nexus between this differentia and the objective of the law. Additionally, as established in cases like *E.P. Royappa v. State of Tamil Nadu* (AIR 1974 SC 555), any law deemed arbitrary is considered violative of Article 14. This provision plays a crucial role in curbing arbitrariness in the exercise of state power and ensuring that no citizen faces discrimination. Nonetheless, it also allows the state the necessary latitude to legislate for specific categories of people, provided such legislation meets the criteria outlined under Article 14.