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**Course
On**

Gender Justice and Workplace Security

by

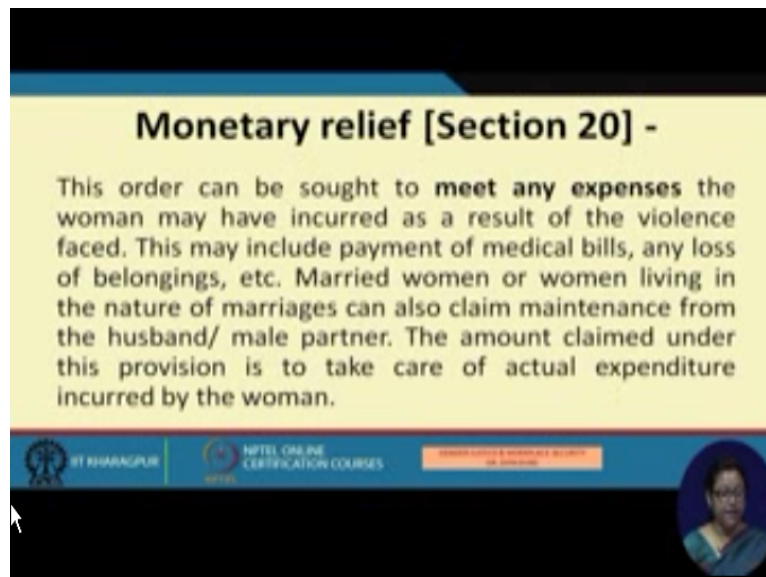
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**Lecture 16: Gender Violence – Within and Beyond
(Contd.)**

Hello and welcome to the course on gender justice and workplace security. In the previous lecture we try to understand the notion of gender violence, and the gender violence in Indian perspective where it takes the form of different offenses being perpetrated against women.

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Now we are thereafter trying to understand the concept of domestic violence specifically perpetuated against women within the family and one of the crucial concerns with regard to women in present times the world over.

And in that context the law which has been passed the more specifically the protection of women from domestic violence act 2005 which has been passed and what is the underlying aim and objective of that act in question. In this we were trying to look into the various rights which the woman is entitled to and the consequent reliefs which have been provided under the act. So she is entitled to a protection order, she is entitled to monetary relief under section 20 of the act.

Now this monetary relief basically speaks of necessary expenditures which is made available to the woman in order to meet the immediate demands which maybe there, demands in terms of maybe medical bills, any loss of belongings etc., the necessary expenditures which she has incurred, or it may, it also gives a woman to claim maintenance from her husband, and the other expenditures that she have incurred in the entire process.

So therefore, whatever expenses, whatever loss has accrued for her, and she may not be in a position to meet those expenditures or those expenses, there is the provision that the woman can seek necessary monetary relief under the law whereby she is able to make good of those losses.

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Compensation order [Section 22] -

A compensation order can be asked for by the woman for injuries (mental and physical) sustained. This is over and above the actual expenditure that can be obtained by a monetary order explained above.

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Dr. Anshu K. Singh

Additionally there can also be a compensation order which can be asked for by the woman and such compensation is for the injuries the mental and the physical which has been sustained by the woman this is over and above the actual expenditure that can be obtained by a monetary order explained before. So therefore apart from the monetary relief additionally for the trauma that she has suffered for the physical injuries she has sustained there can be an order of compensation which can be granted to her.

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Custody order [Section 21] -

A woman can also ask for temporary custody orders for her children. This is to prevent the woman from being separated from her children, which itself is a form of emotional abuse and blackmail.

This order is temporary in nature and does not affect rights under existing laws on custody and guardianship.

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In case she has children and she wants the children to be with her and in her safekeeping then she can ask from the magistrate a custody order under section 21 of the Act 2005, so she can ask for temporary custody orders for a children this is to prevent the woman from being separated from her children which itself is a form of emotional abuse and blackmail this order is temporary in nature and does not affect the rights under existing laws on custody and guardianship. The final decision with regard to the custody of children would be taken by court and there are different other laws for the purpose which deals down the laws of guardianship etc...

So that is not affected however this law provides for an immediate relief, so if the woman is tortured and thrown out of the family and the children are you know kept in the family and prevented from meeting her or prevented from joining her that amounts to further abuse or a serious psychological blow for the woman as well as for the children, so therefore to tide over such a situation there is the provision under section 21 we speak of such custody order being passed by the magistrate.

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Interim / Ex parte order [Section 23] -

An interim order can be given by the court at the time the proceedings are initiated under the PWDVA and before a final order is passed. This is to ensure that women are not detrimentally affected during the course of the legal proceedings. In order to get interim orders, a woman has to show that she has or she is facing violence, or fears violence.

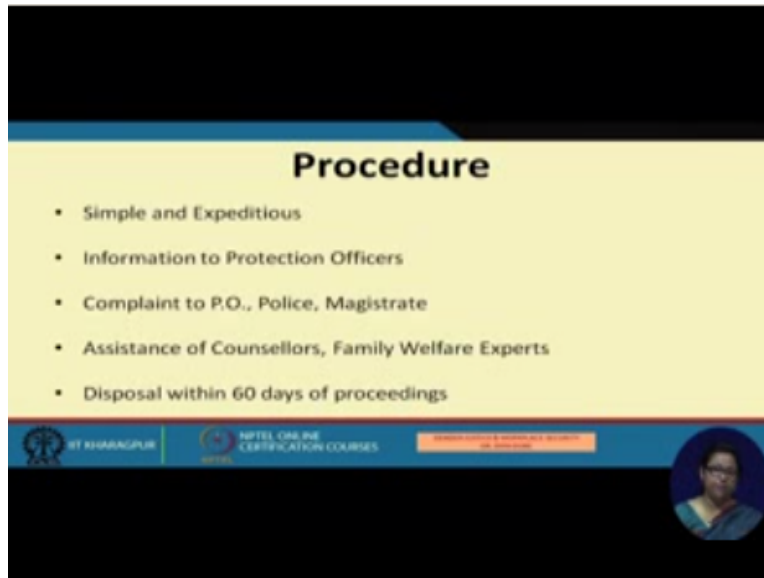
An ex parte order means an order that is passed in the absence of the other party to the dispute. Such orders are interim in nature and passed only if there is an immediate danger to the person making the application or when the other party refuses to appear in court despite prior intimation given by the court.

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There can also be interim orders under Section 23 which can be given by the court and before the final order is passed, now this is to ensure that women are not detrimental affected during the course of legal proceedings and in order to get interim orders a woman has to show that she has or she is facing violence or fierce violence from the other party, now an ex parte order means an order that is passed in the absence of the other party to the dispute such orders are again interim in nature and passed only if there is an immediate danger to the person making the application or the other person refuses to appear in court in spite of intimation given by the court.

So in this situation what happens is because of the immediacy of the situation the court we may proceed to give an order in favor of the woman even because it is necessary that to tide over an immediate danger or immediate situation or a fear of violence such immediate interim orders are to be given or may be the other party is intentionally trying to delay the proceedings or intentionally not appearing in court in spite of notices being given to the person then the woman should not be seen to suffer in those situations, but interim orders as may be necessary depending on the situation and if there is an immediately such orders may be.

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Passed for the protection of women now what is very, very important in this regard or the India entire process where we have seen there are various rights and necessary reliefs or remedies which can be given to the woman, sometimes procedure comes in the way of women are really invoking the provisions of law or trying to pro access the course of justice she may find it expensive she may find it very tedious, very time taking so on and so forth. Now this is what is exactly sought to be avoided in the domestic violence act the process has been made very simple and very expeditious why I say expeditious because disposal of all proceedings has to be within 60 days of initiation of the proceedings.

So that is actually a time limit of two months when a matter has been initiated or a complaint of domestic violence is made and the time the order is passed or the matter is disposed of it must be done by the magistrate within sixty days of time, so it is a very speedy remedy and it is a very simple remedy because there are some or some institutions or officers which have been created to assist the functioning of the act, so there are the protection officers who are to be notified by the states in each district there are a number of protection officers.

Now it is the responsibility of the protection officers to if any information comes to them to see that necessary their help is given out to the woman and to give her all necessary assistance in that regard and to file the domestic incident report also before the magistrate, so these protection officers are sort of friends who are to provide the necessary help and assistance to the women to

take over the situation of domestic violence, so they may bring the issue to the magistrate file the domestic incident report and see that the necessary reliefs are given out to the woman.

A complaint can therefore be filed with the protection officer it can be to anybody for that matter the woman can approach protection officer the woman can approach the police and the police is required to assess the woman to see that she is referred to the to the appropriate place or the protection officer who will help out in this regard or she may move directly to the magistrates who are entitled to look into these issues of domestic violence or there are also service providers in the form of shelter homes which are to be notified for the purpose.

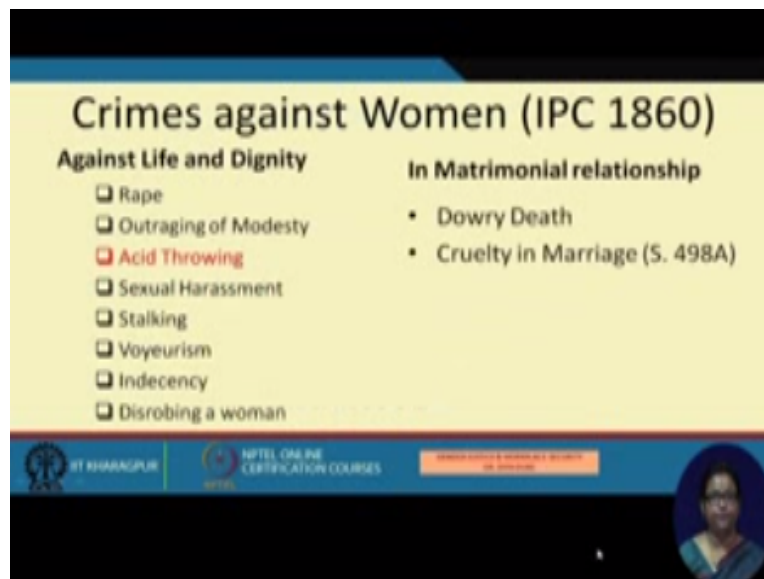
And women who find it difficult to return back to the family or feel that there are threats or there are there is violence or there is throwing or the woman is thrown out and is homeless they can be put up in the shelter homes which are created for the purpose. The magistrate in the in the entire matter has to take the assistance of counselors and family welfare experts, now that is something which is important because this is a matter relating to you know domestic violence or the parties are related to each other.

There is an emotional bond and an intimate bond between the parties and it is necessary that there may if they are put through some counseling or if there are experts who are made a part of the process there may be a better relief or a better remedy given to the woman so that as she wants many times even after filing a case many woman want to go back and once again continue with her matrimonial relationship if such is the interest of the moment to see that if counseling is possible and she can be placed back in the family.

And there is a cordial relation which exists between the parties or in some way if she requires some help or psychological help then such help is meted out to her, so therefore it has tried to create a system which is very friendly and which tries to address the issues and concerns of women so the intricate processes the complicated processes that we speak of in the justice system which is costly which is tedious which requires the help of lawyers.

Where money is involved making it very difficult for women to actually have access to the system is somewhat sought to be removed and done away with by the provisions of the 2005 act, so it tries to establish a very friendly process a very supportive process and every person who are created in terms of the protection officers etc are supposed to provide the necessary care and assistance to the woman in there in her way towards providing justice or seeking justice. So therefore this Domestic Violence Act has been one of the very significant and laudable steps which has been taken and it has been functioning for the last more than decade or so and it has actually helped many women not to take to the courts to the criminal law if they did not want to but sort the necessary release and remedies under the act itself.

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Now once we have understood the issue of domestic violence one of the problems which faces women within the home since these this particular module tries to look into the various aspects of domestic violence whether within the family or beyond. We next look into some of the offenses which have been laid down in the criminal law of the country that is what we call as the Indian Penal Code IPC1860.

Some specific offenses which have been made out for women and those offenses I have categorized in two categories one which is against life and dignity of a woman. These offenses are essentially gender specific offenses where women is the victim as it has been construed under

below where women is the victim and it essentially affects the life and dignity of individual. Generally as listed in the Penal Code their offenses against human body.

But these offenses are not limited to the physical level in terms of an assault on at the physical level against the body of a person, but it is much more because it affects or hurt the dignity and integrity of a person. So therefore the categorization or as an offence against life and dignity and there are several offenses which come in this category of rape outraging of modesty, acid throwing, sexual harassment stalking voyeurism, indecency, disrobing a woman.

These are various offenses which are included in the Indian Penal Code the one on acid throwing has been listed in red for the simple purpose that it has conceived when laid down and defined in the Indian Penal Code is not a gender specific offense. But a gender-neutral offense whoever uses acid etc to perpetrate harm on the other a form of grievous hurt which is committed becomes liable for the offense it is not, it has not been mentioned with regard to gender as regards the victim being a man or a woman it is possible.

However, if you see the multiple instances happening in society in majority of these situations it is girls and women who become victims of such acid throwing and therefore somewhere it can be perceived of as a form of gendered violence and therefore has been put in the list of such acts. Now some other offences one which we have somewhere tried to already discuss is offenses which are perpetrated in matrimonial relationships.

Thus, those which mentioned in the Indian Penal Code involves cruelty in marriage what we spoke in reference to Section 498A that when women are a woman is in the domestic home or domestic household she is subjected to cruelty or harassment by the husband or relatives of the husband, sometime leading to the suicide of the woman and that is taken care of by Section 498A.

And sometimes it takes even cruel form which is referred to as dowry death as form of an offence which is peculiar to India given the practice of dowry where young women are burned in all burns are burnt or are murdered in a way which paves way for family to get rid of that married woman or that married girl and again probably go in for another marriage of the person whereby more dowry can be obtained.

So that is essentially when a death is caused in because of the demands of dowry related to the demands of dowry and leading to the death of a person where section 304B creates a specific type of an offense of dowry death so these are some of the crimes which have been listed against women in the Indian Penal Code, and generally we will try to see some of the contours of these offence in order to understand the protection which is given to them.

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Development of Law

" Women were wholly owned subsidiaries and not independent beings. Rape could not be envisioned as a matter of female consent or refusal...Rape entered the law through backdoor, as it were, as a property crime of man against man. Woman, of course, was viewed as the property."

- Infact, the laws framed were not to protect the women and her bodily integrity, but to protect the man's control and dominance over the female body.
- The making of the Indian Penal Laws, especially those concerning women, clearly indicate the then prevailing notions of morality and the secondary status of women in society.

The slide is part of a presentation from NPTEL (National Programme on Technology Enhanced Learning) Online Certification Courses. It features the NPTEL logo, the text 'NPTEL ONLINE CERTIFICATION COURSES', and a search bar. A small circular inset image of a woman is visible in the bottom right corner of the slide.

Now before we continue the definition it is just to bring before you the fact that these offenses when it made its way into the penile logbook of the Nations not speaking of now, but historically these were never to protect because of women the provisions and their underlying purpose was not to ensure that the women are safeguarded or the women are protected or the dignity of women is maintained.

But as Susan Brown Miller has gone on to say that it was women were wholly owned subsidiaries and not independent beings, rape could not be envisioned as a matter of female consent or refusal rape entered the law through the back door as it were as a property crime of man against man. Woman of course was viewed as the property, so the whole concept or what she argues is the low as we developed and panel provisions which came in never came in to protect the cause of women but to protect the property of man against man.

So therefore women were owned only or wholly owned subsidiaries of men they were nothing better than property which were owned by men and it was important that other men should be

precluded from interfering with the property of that man. So this was the initial idea which went into the making of these particular offenses, but as I said that is where we said that the laws framed were not to protect the woman and her bodily integrity but to protect the man's control and dominance over the female body that is where patriarchy shows its influence its existence since time immemorial where the supremacy and dominance of men over women were thought to be established and where shocks to be emphasized upon.

However even the making of the Indian Penal Code especially those concerning women clearly indicate that then prevailing notions of morality and the secondary status of women in society if one goes deep into the various provisions of the laws and specifically those relating to women as an example one which I have already mentioned while speaking of domestic violence the marital rape exemption where a husband is exempted from any penalty for having committed rape or forced physical relations with his wife.

It shows the secondary status of women somewhere or the relationship becomes important the fact that the man is the husband becomes important and being the husband the man is superior and has control and dominance over his wife becomes significant to the law and that is where the making of the Indian Penal Code and that is a document of 1860 which has been given to us by the British colonial masters reflects in many junctures the existing notions of morality what we call as Victorian notions of morality where the chastity of a woman was her prized possession and the consequent status of women in society.

However over a period of time there have been some amendments which have been made there have been one or the other incorporation of laws new offenses which have been made as well as different forms of judicial interpretations which have gone into the offenses the definition of words and their application from time to time and in that there has been a change which has been seen so when we say development of law.

Where it started it did not start in a right spirit and a right manner in the sense that it was not for the laws for the protection of women but laws for the protection of interests of men on women as property but as we have moved on and maybe in the last few decades etc, so also in other places of the world, now whether is what it looks into the laws of UK, US extra, this notion would not be correct to say that this notion is still predominant but there has been movement and there has been a development.

Whereby the same is true for India where by the integrity or the individuality the person of, the woman has been given importance and hard you know hard personality hard existence have been recognized and that she is an individual and needs to be protected needs to be safeguarded by the law, as an individual has been well established. So therefore there have been a number of judicial decisions which have come over the ages or over the years, which have constantly tried to emphasize upon this fact of the individuality of the person.

And additionally if we see the 2013 criminal law Amendment Act we will find that there are different forms of offences which have been brought into the laws and these offences of voyeur and stalking, sexual harassment etc. Have tried to take care of the rising problems the newer forms of violence which has which is affecting women, similarly there are the information technology laws of 2008 the amended in 2008, which takes which has taken care of many of the violations which happen in cyber space.

Maybe including bullying defamation stalking etc which takes a different colour altogether, so over a period of time there has been definitely a shift in the perspective which has been there and where initially it was something different, in a sense of emphasizing on the inferiority of women. Today it may be wrong to say so and it has really moved to a position where protecting the interests of women is significant and important and that is what the law has tried to do.

Now saying so we will continue in the next lecture looking into the contours of the offense of rape and the newer forms of offense which have been included and then move on to the protection given under the law you know the certain procedural aspects of it and then the role of NGOs civil society etcetera in protecting because of women thank you.