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Course
On

Gender Justice and Workplace Security

by

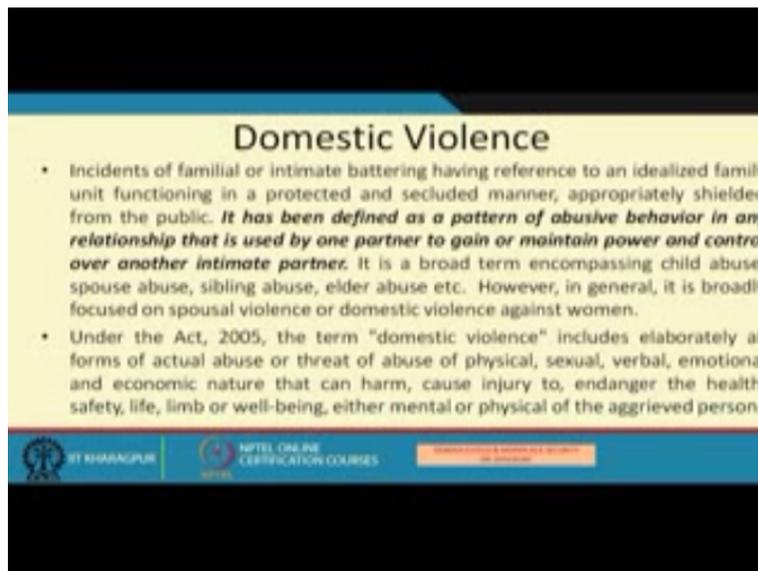
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Lecture 15: Gender Violence – Within and Beyond
(Contd.)

Hello and welcome you to the course on gender justice and workplace security. We are in discussion with regards to the gender violence which is perpetuated against women, both within the family as well as outside.

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Domestic Violence

- Incidents of familial or intimate battering having reference to an idealized family unit functioning in a protected and secluded manner, appropriately shielded from the public. *It has been defined as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.* It is a broad term encompassing child abuse, spouse abuse, sibling abuse, elder abuse etc. However, in general, it is broadly focused on spousal violence or domestic violence against women.
- Under the Act, 2005, the term "domestic violence" includes elaborately all forms of actual abuse or threat of abuse of physical, sexual, verbal, emotional and economic nature that can harm, cause injury to, endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person.

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We understand that gender violence is a very significant issue which faces women in present times and there are different forms of this violence which is perpetuated against women. When we speak of such violence within the family it also takes multiple forms as we have seen in the

previous lecture. But one of the crucial issues with regards to violence within the family is the issue of domestic violence.

Now the problem of domestic violence is again a problem which is not only limited to India, but across the world in all families for that matter or in several families for that matter it has been seen that it is a practice which is much in existence where one spouse abuses the other spouse whether physically, or verbally, or sexually, and tries to thereby exhibit these power or his control over the other spouse predominantly the women.

So the issue or when we speak of domestic violence what we mean by such term, it is generally a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. So it is basically referring to violence or abusive behavior within the family where one partner or one person wants to maintain power and control over the other by means of such abuse.

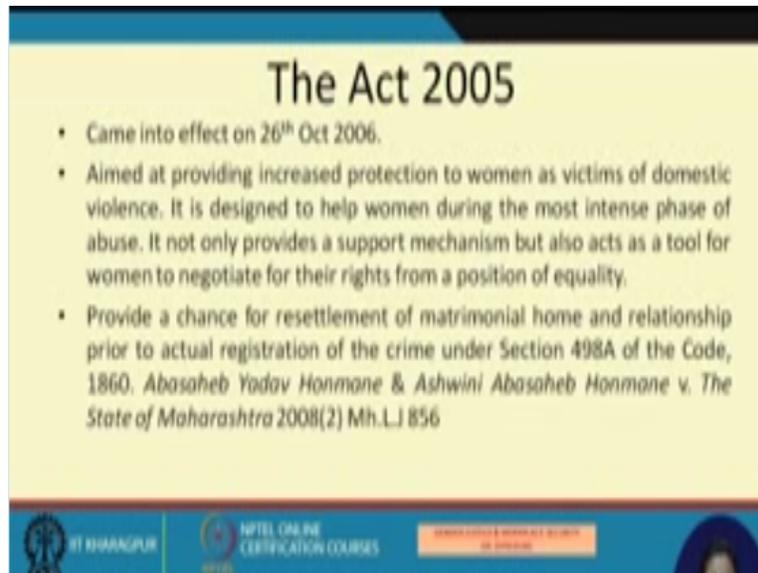
It is a broad term in compassing child abuse, spouse abuse, sibling abuse, elder abuse etc. So when we speak of domestic, it is within the family, it can mean all such members or bring within its connotation, all such members or persons living within the family, so it maybe the brother and sister, it maybe the husband and wife, it maybe the parent and child, it maybe you know elderly abuse, elderly grandparents etc, who are living in the family.

So the concept in compasses all such violence which is perpetuated by one member against the other. However, very broadly speaking or generally the term domestic violence is used in case of spousal violence or most specifically the women, married women in the family by the husband as against the wife. And even sometimes it is referred to as what we previously said as wife batter, or beating the wife.

Now under the act domestic violence act 2005 the term domestic violence includes all forms of actual abuse or threat of abuse or physical, sexual, verbal, emotional, and economic nature that can harm cause injury to indenter the health safety, life limb or well being either mental or physical of the aggrieved person, so the term domestic violence has been given a broad definition under the 2005 legislation whereby it includes all forms of violence we speak physical violence emotional violence sexual violence etc it includes all of the different forms of violence and that

is perpetrated in order to cause injury or to endanger to the health and well being of the other person.

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The Act 2005

- Came into effect on 26th Oct 2006.
- Aimed at providing increased protection to women as victims of domestic violence. It is designed to help women during the most intense phase of abuse. It not only provides a support mechanism but also acts as a tool for women to negotiate for their rights from a position of equality.
- Provide a chance for resettlement of matrimonial home and relationship prior to actual registration of the crime under Section 498A of the Code, 1860. *Abasaheb Yadav Honmane & Ashwini Abasaheb Honmane v. The State of Maharashtra* 2008(2) Mh.LJ 856

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That is the women now once we understand domestic violence we can say that this act as been a really welcome step with regard to addressing the issue of domestic violence in the country now not to say that we do not have or did not have any law on that point there was in existence the criminal law of the country which we have in the Indian pineal code, specifically a provision section 498 A which spoke of domestic violence. Now that provision section 498A was incorporated in the Indian penile code and it speaks of cruelty by husband or in-laws.

Now cruelty the term as been defined in a tow ways one which speaks of any willful conduct which is perpetrated against a women such conduct access likely to drive here to commit suicide or which causes grave injury or causes danger to the life numb or health of the women so therefore any conduct which drives the women to commit suicide or causes grave injury to the women comes within the term of cruelty other than that any other form of harassmt which is a coursing the women to fulfill nay unlawful demands of dowry because in India the issues of dowry, is a very big problem.

So the other part of the definitions speaks of harassmt in relation to dowry when that is the situation that also comes within the term of cruelty, so in section 498 A what is laid down that if a women who is married is subjected to any cruelty or arrestment by the husband or relatives of

the husband then she can bring in a case of domestic violence or cruelty against the husband or in-laws of the husband and they will be punished under section 498 A of the act these section is a very significant incorporation in terms.

That it wants to bring in it brings in criminal act or penal action against the party or against the offender who perpetrates violence against the wife and they are by endangers the life and security of the wife and in certain cases been the death of the wife because of here committing suicide in those situations. So there was this criminal law wait this criminal law provision which was in existence in the Indian penal code, however as I said this was a criminal action which was conceived of in the independent law of the land, however since it is believe that it is a behavior within the family and within part is who are intimately related to each other it was felt that other than the criminal law action there should be some other means where by the women should be able to establish her rights.

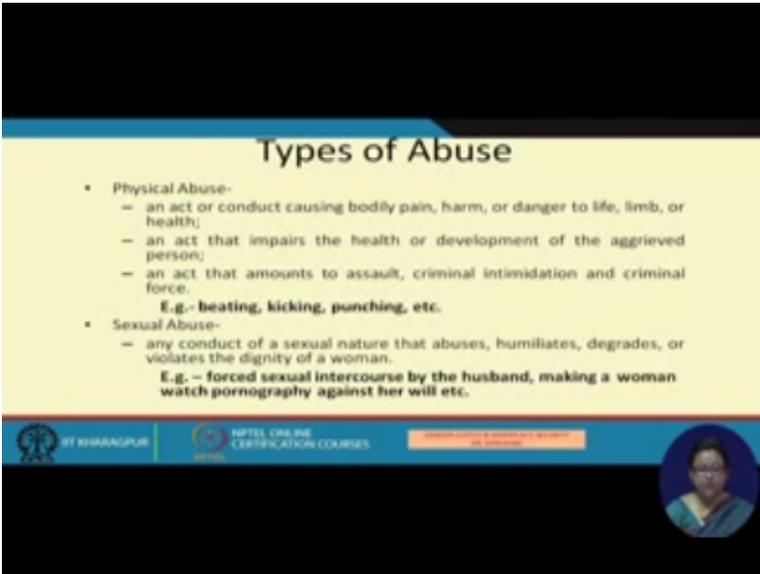
And ensure here safety as I against the other person so therefore instead of immediately invoking criminal law there should some other civil means by which the part is can seek some address so that was one of the understanding and the second thing was, in issues of domestic violence sometimes it requires immediate actions to be taken where the women is seriously threatened or she is thrown out of the family etc. In those situation it requires immediate relief to the given to the women.

Now in that situation the criminal law fell short because what criminal law leads down is in terms of punishing the person, he does not really specify any provision which regard to the protection of the women so that is where the domestic violence act, the protection of women from domestic violence act assumes significance and it came into the fact on 26th October 2006, and the case down that it aimed at providing increase protection to women as victims of domestic violence it is designed to help women.

During the most intense face of abuse it not only provides a support mechanism but also access as two for women to negotiate for the rights from a positions of equality so therefore this act provided a chance for re settlement of matrimonial home and relationship prior to actual registration of the crime under section 498A of the code, so therefore the act was and opportunity for a women to not only press the criminal law into action or immediately going for a criminal prosecution but to see that that is some other.

Civil remedy which can be invoked where by her rights are maintained and some where the interest of this state in seen through it that if there can be further chances of resettlement of the matrimonial home etc. that can be maintained.

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The slide is titled "Types of Abuse" and is presented on a yellow background with a blue header and footer. It lists two main categories of abuse:

- **Physical Abuse-**
 - an act or conduct causing bodily pain, harm, or danger to life, limb, or health;
 - an act that impairs the health or development of the aggrieved person;
 - an act that amounts to assault, criminal intimidation and criminal force.
E.g.- **beating, kicking, punching, etc.**
- **Sexual Abuse-**
 - any conduct of a sexual nature that abuses, humiliates, degrades, or violates the dignity of a woman.
E.g. – **forced sexual intercourse by the husband, making a woman watch pornography against her will etc.**

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Now the definition of sexual domestic violence as has been get down under the act is quite broad and all in composing it speaks of the definitions speaks of physical abuse, physical abuse as including an act or conduct causing bodily pain or danger to life or health of the women and act that impairs the health or development of the aggrieved person and thirdly an act that amounts to assault criminal intimidation and criminal force, so therefore the types of abuse spoken off first includes physical abuse which is an act or conduct perpetrated causing bodily pain impairing the health of the women or where it amounts to intimidation or use of force against the women.

So examples of it may be given in the form of acts such as beating, kicking, punching a women etc the next speaks of sexual abuse a conduct of a sexual nature that abuses humiliates, degrades or violates the dignity of a women, examples include forced sexual intercourse by the husband making a women watch pornography against her will etc. Now it may be mentioned here that forced sexual intercourse by the husband does not constitute an offence of rape under the relevant provisions that section 375 of the Indian penal court.

So what we have is a marital rape exemption in the law whereby a person by virtue of the relationship which exist between the two parties that is the perpetrator and the victim that an offence of rape is not made out, however that is what finds mention in the domestic violence act and a women though she cannot take recourse to under the criminal law she can move under the domestic violence act for such act being perpetrated by the husband.

Verbal or emotional abuse including any insult ridicule humiliation name calling etc insult or ridicule for not have a child or a male child something which is very, very common in many Indian households where a women is unable to conceive she is called various names or if she is unable to give birth to a male child then again there are lot of humiliations which is hit on her repeated threats to cause physical pain to any person in whom the agreed person is interested.

So it may have examples like commenting on nooks calling her a loose women, ostracizing her blaming a women for not having a male child etc comes within such verbal and emotional abuse and economic abuse where there is a deprivation of the agreed person of the economic and financial resources which is entitled too and which she acquires out of necessity such as house hold necessities strengthen her jointly or separately owned property maintenance and rental payments it may also include disposing of house hold assets or alienation of moveable or immoveable assets. And it also includes restricting continued access to resources or facilities in which she has an interest or entitlement.

So therefore, some examples may be denial of food, disposing of the house hold assets without the consent of the women disposing of her own assets including what belongs to her such as the strengthen against her will. So, all such acts which are perpetrated would come within the definition of domestic violence now when it comes to the issue of domestic violence who can complain and against home.

Now the act lays it very clearly that any women in a domestic relationship can be subjected to domestic violence or can bring in a complaint of domestic violence so any women in domestic relationship who is subjected to domestic violence can be the complainant in this case and against whom it can be against any adult male person in a domestic relationship or relationship in the nature of marriage as also a relative of the husband.

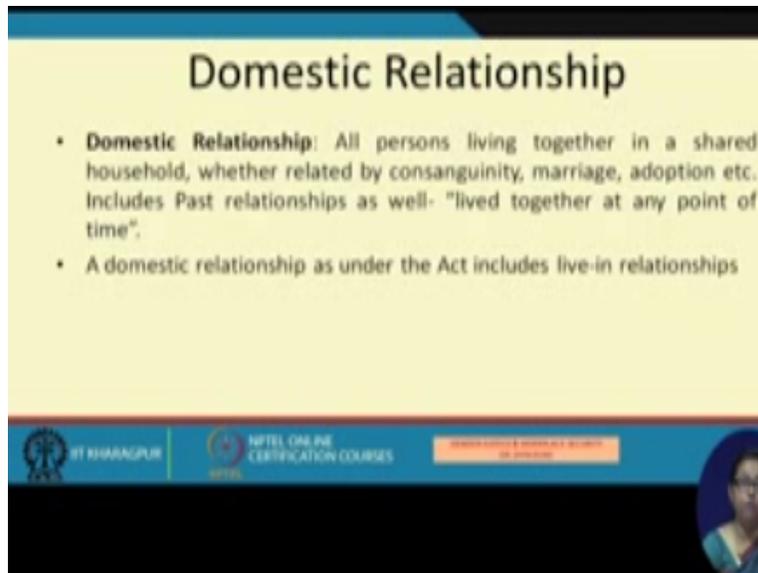
So the action can be brought against any male person whether it may be the husband or any other relatives of the husband, but what is important here is there was a, there is or there was a domestic relationship which exists between the parties. Now one interesting question which has come up before the court is can a woman file a case against another woman, because when we speak of husband or relatives of the husband or as it seen many times it is not the husband but the mother in law in the family who is the perpetrator of such violence against the daughter in law.

So the question to be answered is whether it is only against male members or female members, now initially the understanding was as it is seen show many of the cases there *Mena Kurishi*, *Ajay Kant verses Alka Sharma*, *Renuga verses Mono Reddy* extra that female members are excluded the view was that the domestic violence act is specifically made out to protect the cause and interest of women and therefore one woman should not be allowed to bring a case of domestic violence against another woman. So in that way the interest or the purpose of the act would be defeated, however there was the case of 2012 where it was laid down that no such restrictive meaning can be given to the term relative.

So when we are picking of relative it may not only be the husband it relative of the husband a male relative but it can also be the female relatives and in one of the recent judgments in October 2016 it has been ruled by the supreme court that perpetrators and abettors of domestic violence can be women because they have been given recognition of the fact then many times the main perpetrator against the women in the house is the other women in the house may be the sisters maybe the mother or may be the other daughter in law etc who are there.

And it would not serve any purpose of law if they go free, so they may be abettors or they may also be perpetrators in the entire process.

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Now when we said that the parties must be in a domestic relationship what is meant by domestic relationship is all persons who are living together in a shared house hold now such people are related by consanguinity marriage or adoption. Now it includes also past relationship that is people who have lived together at any point of time so what is important is the people living together in a shared house hold and they are related either by marriage or by adoption etc they are related to one another.

And people who have been in such relationship and later on are no longer it can also invoke the provisions of the domestic violence act. Now here another interesting point is when speaking of domestic relationships the concept of live-in relationship have also been taken care of by the law, saying meaning that such relationships also can get the protection of the law. Why it has in significance because most of the laws and the protections which are given are to parties who are legally married to each other.

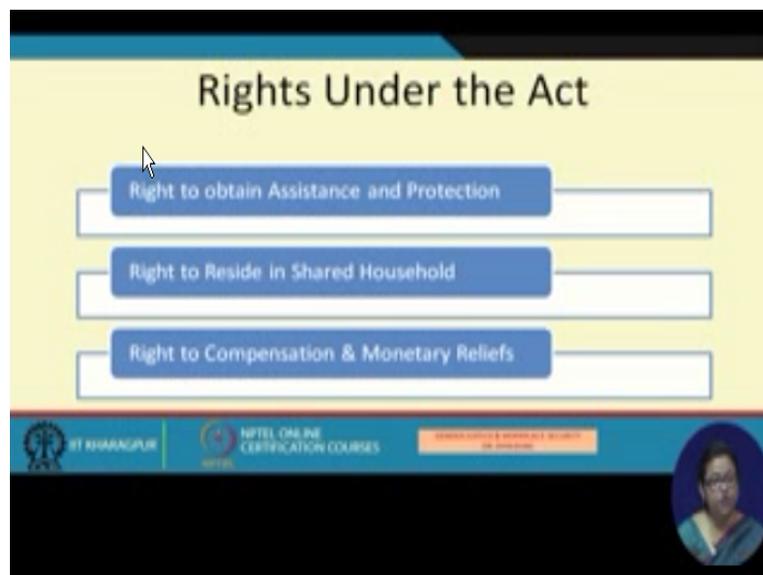
Marriages there are certain legal connotations and requirements and only when parties are married to each other that the protection of the law extends however domestic violence somewhere these act has raked for beyond and try to take care of these recent and modern

developments happenings in the society were without marriage men and women who are majors are choosing to live together.

However the supreme court in two cases have laid down certain guidelines were living relationships can be taken has in the nature of marriage so therefore if the parties are living together for a considerable period of time they have relations with each other they are moving out in society has man and wife they are join financial resources or putting their resources together and they plan to carry on plan to have children etc.

There are some such grounds which are been laid down were by it may be taken that they too together intent to stay and intent to continue life together that togetherness being revealed in one or the other forms in which they are conducting themselves just to make appoint of one night stand cannot take the nature of a live in relationship to get the protection of the law.

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Now there are various rights which are guaranteed under the act now this rights are guaranteed to the women who has been subject of such domestic violence so it is the right to obtain assistance and protection the right to reside in a shared house hold the right to compensation and monetary reliefs this is the situation or this act intakes to protects the interest and cause of women when a women is subjected to domestic violence very often the issue of physical injury becomes important were by she Medicare immediate medical attention and assistance or she may request she may thrown out of the house.

Because of which Medicare shelter she may have children with herself whose protection must be ensured the person must be somewhere restrained so that he cannot perpetuate further against the women many Indian women do not have independent economic standing were by the dependent solely on the family that is the husband and his family for her economic survival, so therefore she may require monetary relief's compensation etc. now these requirements where the short term and long term are generally to be satisfied by the provisions of these act.

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What do the rights entitle her to?

A woman can get reliefs from the court. This includes much needed support and compensation.

The orders the court can direct are as follows:

1. Protection Order [Section 18]-

- This can also be termed as a "stop violence" order. Through this order the court can direct the other party to immediately stop the acts of violence.

The following incidents can also be prevented through the "Protection Orders":

- a. Preventing the perpetrator from entering the woman's place of employment and causing harassment.
- b. Preventing any communication with the woman from the perpetrator.
- c. Preventing any violence being caused to a person related to the woman.
- d. Preventing any financial action from being taken by the perp to the woman's detriment.

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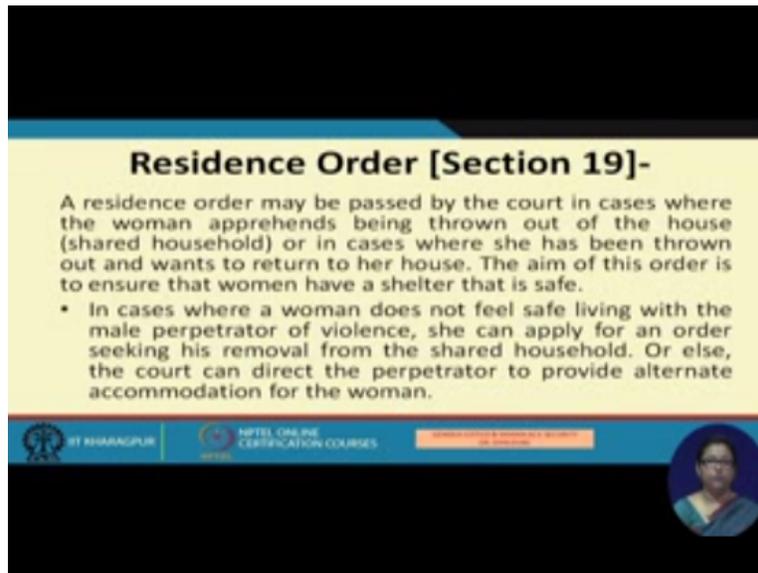


So what do the rights entitled her to? Now she can get appropriate relief from the court, now these reliefs includes various types which have been spoken of and they intent to provide her necessary support which she requires during the phase immediately as well as for some period of time, so first is the protection order spoken of in section 18, now the protection order is also refer to as the stop violence order.

Now through this order, the court can directly order the party to immediately stop the act of violence and it would go to such protection orders to prevent the perpetrator from entering the women place of employment and causing harassment and preventing communication with the women, preventing any violence been caused to the person or any other person or to the women herself, preventing any financial action from have been taken by the perpetrator to the women's betterment.

So therefore all necessary actions which are immediately required where by the women is safe guarded and the man is not able to perpetrate further violence against the women is given by the protection order.

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Residence Order [Section 19]-

A residence order may be passed by the court in cases where the woman apprehends being thrown out of the house (shared household) or in cases where she has been thrown out and wants to return to her house. The aim of this order is to ensure that women have a shelter that is safe.

- In cases where a woman does not feel safe living with the male perpetrator of violence, she can apply for an order seeking his removal from the shared household. Or else, the court can direct the perpetrator to provide alternate accommodation for the woman.

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The next important comes the residence order, a residence order that may be passed by the court in cases where the women apprehensive been through out of the house that is they share household and she wants to return to the house. Now it is to ensure that she has a safe shelter of her own. So it is very important, that she is able to have some accommodation for herself whether the same house where she was living or it may be the situation of an alternative accommodation for the women.

But she must have some place and id she does not feel safe enough that there can be a residence order that gives her the right to continue in the same place or the court can direct the perpetrator to provide alternate accommodation for the women. In the next lecture we will see the other right which is the women is entitled to under the law.