

## **Applicability of DV Act ,2005 in Family Court**

If there is any matrimonial dispute arises between the parties. Parties may approach or file a case before a criminal court as well as before a Family court .

The aggrieved Party can make an application to the Magistrate claiming one or more reliefs under section 12 of Protection of Women from Domestic Violence Act, 2005.

**The DV Act authorise the Magistrate to grant the following orders and reliefs -**

- 1- *Monetary relief*
- 2- *Custody order*
- 3- *Protection order*
- 4- *Residence order*

## **Explanation of Section 7 of the The Family Courts Act 1984**

The Family Court shall exercise the jurisdiction regarding the suits and proceedings of the following nature :-

1,A suit or proceeding between the parties to a marriage for a decree of nullity of marriage , restitution of conjugal rights, judicial seperation or dissolution of marriage,

2,A suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person,

3,A suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them,

4,A suit or proceeding for an order of injunction in circumstances arising out of marital relationship,

5,A suit or proceeding for a declaration as to the legitimacy of any person,

6,A suit or proceeding for maintenance,and

7,A suit or proceeding in relation to the Guardianship of the person or the custody,or access to, any minor.

**The DV Act is applicable in the Family Courts in following matters**

1,When the question arises before the court regarding overlapping Of jurisdiction of the Family Court and the Magistrate empowered under DV Act.

2,Whether the Family Court can grant reliefs and orders available under The DV Act ?

## **Areas of overlapping of jurisdiction -**

There may be some areas of overlapping of the jurisdiction of the Family Court and the court of Magistrate. It may be mainly in following matters -

1- ***Maintenance proceedings***

2- ***Custody of children***

Section 20 of the DV Act deals with monetary relief to an aggrieved person and her children. In monetary relief, the Magistrate is authorised to grant monthly payment of maintenance as required by aggrieved person and her children.

A suit or proceeding for maintenance may be instituted before the Family Court under explanation (f) of the section 7 of the Family Court Act.

The family court is authorised to grant maintenance under section 125 CrPC , under section 24 and 25 of Hindu marriage Act, and under different provisions of the Hindu Adoption and Maintenance Act.

Question may be arise before the Court that maintenance has been granted in a previous proceeding ,the subsequent application for maintenance is not maintainable.

## **Important Judgements**

The following judgements are important on this point -

**1- Zuveria Abdul Majid Khan Patni Vs Atif Iqbal Masoori**  
**(2014 )10 SCC 736**

It has been held by the Hon'ble Apex Court that " monetary relief as stipulated under Section 20 of Domestic Violence Act is different from maintenance, which can be in addition to an order of maintenance under section 125 CrPC or any other law."

## **2- Vishal VS Aparna and others on 13 June 2018, Bombay High Court-**

"section 20(1)(d) of the DV Act makes it clear that the maintenance , which can be granted under the said Act , can be in addition to an order of maintenance under section 125 Cr.PC or any other law time being in force . Section 26 of the DV Act enjoins the duty of the aggrieved person to inform the Magistrate, if she is obtaining maintenance under any other law. maintenance granted under the DV Act is in addition to amount already granted in any other proceeding. Same is liable to be adjusted against amount of maintenance."

**3-Shomi Nikhil Danani Vs. Tanya banan Danani 2019( 3)SCC  
697**

In this case, Hon'ble The Supreme Court laid down that:

"Mere passing and order under section 125 CrPC does not preclude the respondent from Seeking appropriate relief under the Domestic Violence Act."

#### **4- Chandra Bhushan Vs Smt . Savitabai on 11 November 2021**

It has been held by the Court that:

"It is well settled that a wife can make a claim of maintenance under different statutes. If maintenance is awarded under one of the statute that by, itself would not preclude the Claimant from raising another application under a different statute claiming maintenance . The only rider is disclosure of this fact in the subsequent proceedings."

## **6- Rajneesh VS Neha (2021 ) 2 SCC 324**

This is one of the most important judgement regarding maintenance. With regard to the issue of overlapping of jurisdiction the Hon'ble Apex Court laid down following guidelines -

" In a maintenance proceeding where successive claims for maintenance are made by a party under different statutes the court would consider an adjustment or set off of the amount awarded in the previous proceedings. It is mandatory for the applicant to disclose the previous proceeding and the order passed in that proceedings.

It is clear that maintenance granted under the DV Act would be in addition to an order of maintenance under section 125 CrPC and any other law for the time being enforce. There is no bar to seek maintenance both under DV Act and under section 125 CrPC , the Hindu marriage Act or the Hindu adoption and Maintenance Act .

Though the wife can simultaneously claim maintenance under the different enactment it doesn't in any way mean that the husband can be liable to pay maintenance of awarded in each of the said proceedings. While determining the quantum of maintenance under section 125 CrPC the Magistrate would take into consideration the maintenance/interim maintenance awarded in other proceeding or in DV Act.

The right to claim maintenance under section 125 CrPC, Hindu Marriage Act, Hindu Adoption and Maintenance Act and under D.V. Act are an independent right. Jurisdiction of the court can't be ousted on the plea that the applicant is already getting maintenance in other law. But while granting the quantum of maintenance that may be taken into consideration."

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After going through the above-mentioned judgements ,It is well settled that a wife or an aggrieved woman can make a claim for maintenance under different statutes. There is no bar to seek maintenance under DV Act, section 125 CrPC and under the Hindu Adoption And Maintenance Act.

However it would be iniquitable and unjustified to direct the husband or a person from whom ,seeking maintenance, to pay maintenance under each of the proceedings.

If maintenance is awarded in a previous proceeding, it is a legal obligation to disclose the same in a subsequent proceedings for maintenance. While deciding the quantum of maintenance in the subsequent proceeding the court shall take into consideration the quantum of maintenance awarded in previous proceeding. The court would grant an adjustment or set off of the said amount.

## **Custody of children**

Question of overlapping of the jurisdiction may be arise in the matter of custody of minor children under DV Act.

Similar issue came up for consideration before the Hon'ble High Court of Rajasthan in ***Payal Agarwal VS Kunal Agarwal, 2014***

The Hon'ble Court laid down " under section 21 of the DV Act independent remedy has been provided to seek custody of the minor child. The Magistrate can grant temporary custody of such a child to the aggrieved person during the course of proceeding."

Under the Family Court Act, 1984, any person can file an independent suit or proceeding in relation to the Guardianship, custody or access to any minor.

Section 8 of Act of 1984 confers exclusive jurisdiction upon the Family Court in relation to the suits and proceedings of nature mentioned in section 7 of the Act .

Section 21 of the DV Act has limited application and despite being subsequent legislation it cannot have overriding effect on the Act of 1984.

The Act of 1984 was specially meant for establishment of special courts , so that matters referred in section 7 of the Act shall be dealt by the Special Court/ Family Court.

Thus it is clear that, Under Section 21 of Domestic Violence Act the custody order of any minor may be passed by Magistrate. Custody order passed by the Magistrate under Domestic Violence Act is temporary in nature no permanent order regarding custody can be passed by the magistrate under Domestic Violence Act.

The family Court under the Family Court Act, 1984 can make permanent order regarding custody of minor children of the parties. Under this Act any party can file an independent suit or proceeding in relation to the Guardianship of the minor or access, or custody of minor. The scope of the Act of 1984 is much wider in comparison to section 21 of the DV Act.

## **Whether the family can entertain the application filed under the DV Act?**

Section 26 of the DV Act provides that-

Relief in other suits and legal proceedings-

1, Any relief available under sections 18, 19, 20, 21 and 22 may also be sought in any legal

Proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

2, Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

In <sup>3</sup>case any relief has been obtained by the aggrieved person in any proceedings Other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief .

The Bombay High Court has upheld  
In **Rajkumar Rampal Pandey vs Sarita Rajkumar Pandey, and Hithesh Prakashmalji Mehta VS Aashika Hitesh mehta ,2020 SCC Online BOM 983**

“In view of section 7(2)(b) of the Family Courts Act read with section 26 of the DV Act that the Family Court would get jurisdiction to entertain an application for relief under section 18 to 22 of the DV Act.”

The Kerala High Court in **Sudhannya K.N VS Umasankar Valsan ,and Venugopalan VS Jayasree V. Nair -**

discussed the legislative intent behind section 26 of the Act and held that “the DV Act guarantees larger rights in favour of the women by giving her the option To approach either the Family court or the Magistrate at her convenience . The Family Court have the power under section 26 to pass interim protection orders as well as interim Residence orders . The Family court could even take cognizance of breach of interim Orders under section 31 of the DV Act.”

## CONCLUSION

Section 26 was added specially to ensure that women facing domestic Violence could claim reliefs under the DV Act , not only before the jurisdictional Magistrate , but also in other courts such as Family Courts or the Civil Courts where there they may have other proceedings . In most of the matrimonial Matters this would be common because there would be divorce, maintenance or custody and guardianship proceedings pending in the Family Court and Proceedings relating to property pending before the civil court.

If the women needed protection orders , residence orders, monetary reliefs or custody orders , the same could be obtained by her by making an application For the same under the DV Act in those on going proceedings .

However section is not used enough and in most of the cases women facing Domestic violence still have to approach only the Magistrates for reliefs .

It is clear that though an application under section 12 of DV Act can be considered only by Magistrate, the reliefs that can be granted under section 18 to 22 can also be granted by the Family Court while dealing with the pending proceedings.

Thank you  
Gunjan Singh  
Chief Judicial Magistrate  
Bageshwar