

DOMESTIC VIOLENCE ACT, 2005

- (a) Parties by whom and against whom reliefs can be sought
- (b) Types of reliefs
- (c) Execution of orders

by

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Introduction:

Domestic violence is sadly a reality in Indian society, a truism. In the Indian patriarchal setup, it became an acceptable practice to abuse women. There may be many reasons for the occurrence of domestic violence. From a feminist standpoint, it could be said that the occurrence of domestic violence against women arises out of the patriarchal setup, the stereotyping of gender roles, and the distribution of power, real or perceived, in society. Following such ideology, men are believed to be stronger than women and more powerful. They control women and their lives and as a result of this power play, they may hurt women with impunity. The role of the woman is to accept her 'fate' and the violence employed against her meekly.

The Protection of Women from Domestic Violence Act (or the Domestic Violence Act) is a laudable piece of legislation that was enacted in 2005 to tackle this problem. The Act in theory goes a long way towards protection of women in the domestic setup. It is the first substantial step in the direction of vanquishing the questionable public/private distinction traditionally maintained in the law, which has been challenged by feminists' time and again. Admittedly, women could earlier approach the Courts under the Indian Penal Code (IPC) in cases of domestic violence. However, the kinds of domestic violence contemplated by this Act, and the victims recognized by it, make it more expansive in scope than the IPC. The IPC never used the term domestic violence to refer to this objectionable practice. In fact, the only similar class of offences addressed by the IPC dealt with cruelty to married women. All other instances of domestic violence within the household had to be dealt with under the offences that the respective acts of violence constituted under the IPC without any regard to the gender of the victim.

This posed a problem especially where the victims were children or women who were dependent on the assailant. In fact, even where the victim was the wife of the assailant and could approach the Courts under S.498A of the IPC, she would presumably have to move out of her matrimonial home to ensure her safety or face further violence as retaliation. There was no measure in place to allow her to continue staying in her matrimonial home and yet raise her voice against the violence perpetrated against her. This, together with many other problems faced by women in the household, prompted this enactment.

Scope of the Act

The scope of this piece of legislation has been expounded in plethora of judgments by the High Courts and the Supreme Court in India. For instance, in a recent judgment the High Court of Gujarat in the case of **Bhartiben Bipinbhai Tamboli vs. State of Gujrat and ors, 2018 (1) Crimes 11 (Guj)** while extensively discussing the provisions under the Domestic Violence Act remarked that:

The domestic violence in this country is rampant and several women encounter violence in some form or the other or almost every day. However, it is the least reported form of cruel behaviour. A woman resigns her fate to the never-ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner, a single woman in her lifetime. This non-retaliation by women coupled with the absence of laws addressing women's issues, ignorance of the existing laws enacted for women and societal attitude makes the women vulnerable. The reason why most cases of domestic violence are never reported is due to the social stigma of the society and the attitude of the women themselves, where women are expected to be subservient, not just to their male counterparts but also to the male relatives.

Till the year 2005, the remedies available to a victim of domestic violence were limited. The women either had to go to the civil court for a decree of divorce or initiate prosecution in the criminal court for the offence punishable under Section 498A of IPC. In both the proceedings, no emergency relief is available to the victim. Also, the relationships outside the marriage were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence, not out of choice but of compulsion.

Having regard to all these facts, the parliament thought fit to enact Domestic Violence Act. The main Object of the Act is protection of women from violence inflicted by a man or/and a woman. It is a progressive Act; whose sole intention is to protect the women irrespective of the relationship she shares with the accused. The definition of an aggrieved person under the Act is so wide that it is taken within its purview even women who are living with their partners in a live-in relationship.

What is the Domestic Violence Act?

The Domestic Violence Act, officially known as the Protection of Women from Domestic Violence Act 2005, was brought into force by the Indian government from October of 2006. The Domestic Violence Act was originally passed by Parliament in August of 2005 and subsequently assented to by the President in September of the same year. In November of 2007, the Domestic Violence act was ratified by four of the twenty-eight state governments in India.

The Domestic Violence Act, for the first time in the nation's history, formally defined an act of domestic violence. The definition has since been used in thousands of court cases, both of a civil and criminal nature, to prosecute those individuals who commit violent actions against their spouses or loved ones.

Constitutional Perspective

The enactment in question was passed by the Parliament with recourse to Article 253 of the Constitution. This provision confers on the Parliament the power to make laws in pursuance of international treaties, conventions, etc. The Domestic Violence Act was passed in furtherance of the recommendations of the United Nations Committee on the CEDAW. The Act encompasses all the provisions of the Specific Recommendations which form a part of General Recommendation No.19, 1992.

Review of Important Provisions

The Act, in a bold break from prior legislations, gives a very expansive definition to the term "domestic violence", a term hitherto not even used in

legal parlance. Domestic violence is defined in a comprehensive way in S.3 of the Act, comprising:

- Physical, mental, verbal, emotional, sexual and economic abuse,
- Harassment for dowry,
- Acts of threatening to abuse the victim or any other person related to her.

The Act thus deals with forms of abuse that were either not addressed earlier, or that were addressed in ways not as broad as done here. For instance, it includes in its ambit sexual abuse like marital rape which, though excluded under the IPC, can now be legally recognized as a form of abuse under the definition of sexual abuse in this Act. The definition also encompasses claims for compensation arising out of domestic violence and includes maintenance similar to that provided for under S.125 of the Code of Criminal Procedure (CrPC). Nevertheless, the claim for compensation is not limited to maintenance as allowed by that provision. It is noteworthy that the maintenance available under this section must be in correspondence with the lifestyle of the aggrieved party. Lastly, the Act identifies emotional abuse as a form of domestic violence, including insults on account of the victim's not having any children or male children.

Protection of Women and Fundamental Rights

The Statement of Objects and Reasons declares that the Act was being passed keeping in view the fundamental rights guaranteed under Articles 14, 15 and 21. Article 21 confers the right to life and liberty in negative terms, stating that it may not be taken away except by procedure established by law, which is required, as a result of judicial decisions, to be fair, just and reasonable. The right to life has been held to include the following rights (which are reflected in the Act), among others:

1. The right to be free of violence: In **Francis Coralie Mullin v. Union Territory Delhi, Administrator, AIR 1981 SC 746**, the Supreme Court stated, any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.

This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence (and is hence punishable under

the Act). Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person. Apart from this, the Act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of domestic violence. By adoption of such an expansive definition, the Act protects the right of women against violence.

2. The right to dignity: In **Ahmedabad Municipal Corporation vs. Nawab Khan Gulab Khan, AIR 1997 SC 152**, the Supreme Court emphasized the fact that the right to life included in its ambit the right to live with human dignity, basing its opinion on a host of cases that had been decided in favour of this proposition. The right to dignity would include the right against being subjected to humiliating sexual acts. It would also include the right against being insulted. These two facets of the right to life find mention under the definitions of sexual abuse and emotional abuse, respectively. A praiseworthy aspect of the legislation is the very conception of emotional abuse as a form of domestic violence. The recognition of sexual abuse of the wife by the husband as a form of violation to the person is creditable, especially as such sexual abuse is not recognized by the IPC as an offence. These acts would fall within the confines of domestic violence as envisaged by the Act, though the definition would not be limited to it.
3. The right to shelter: In **Chameli Singh vs. State of U.P. ,1993 (22) ALR 37**, it was held that the right to life would include the right to shelter, distinguishing the matter at hand from **Gauri Shankar vs. Union of India, 2003 (1) BLJR 535**, where the question had related to eviction of a tenant under a statute. Ss. 6 and 17 of the Domestic Violence Act reinforce this right. Under S.6, it is a duty of the Protection Officer to provide the aggrieved party accommodation where the party has no place of accommodation, on request by such party or otherwise. Under S.17, the party's right to continue staying in the shared household is protected. These provisions thereby enable women to use the various protections given to them without any fear of being left homeless.

Article 14 contains the equal protection clause. It affirms equality before the law and the equal protection of the laws. Article 14 prohibits class legislation, but permits classification for legislative purposes. A law does not become unconstitutional simply because it applies to one set of persons and not another. Where a law effects a classification and is challenged as being violative of this Article, the law may be declared valid if it satisfies the following two conditions:

1. The classification must be based on some intelligible differentia,
2. There must be a rational nexus between this differentia and the object sought to be achieved by the law.

As a result of the ruling in cases such as **E.P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555**, any law that is arbitrary is considered violative of Article 14 as well. This provision is significant in putting a stop to arbitrariness in the exercise of State power and also in ensuring that no citizen is subjected to any discrimination. At the same time, it preserves the State's power to legislate for a specific category of people.

Article 15 disallows discrimination on the grounds of religion, caste, sex, race, etc., but permits the State to make special provisions for certain classes of persons, including women and children.

The Domestic Violence Act promotes the rights of women guaranteed under Articles 14 and 15. Domestic violence is one among several factors that hinder women in their progress, and this Act seeks to protect them from this evil. It indeed effects a classification between women and men, protecting only women from domestic violence, but this classification is founded on an intelligible differential, namely, gender, and also has a rational nexus with the object of the Act. Further, the Act is far from arbitrary, in that it is a well-thought and necessary attempt to curtail domestic violence and eventually vanquish it. It is to be remembered that it is generally women who are the victims of domestic violence, and not men. At this stage, it is also essential to keep in mind Article 15(3) which empowers the State to make legislations like this for the benefit of women, thus creating an exception in their favour against the operation of Article 15(1).

What is the definition of Domestic Violence according to the Domestic Violence Act?

The Protection of Women from Domestic Violence Act defines domestic violence in a series of steps or classifications. For the purpose of the domestic violence act, domestic violence is defined as any conduct that is delivered in a habitual nature and encompasses various forms of assault, which make the life of the aggrieved or inflicted person miserable.

The domestic violence act states that the victimized party is impeded from his or her personal liberties through perpetual violence or belittlement; the nature of the definition constitutes a feeling of depression by the aggrieved party even the underlying conduct does not amount to physical ill-treatment.

The Domestic violence act further defines domestic violence as any action, committed in the constraints of a relationship or marriage, as any action, which forces the aggrieved part to lead an immoral life or any action that delivers harm or injuries to the aggrieved person.

The Domestic Violence Act also states that a domestic violence charged will not be heard if the pursuit of course of conduct by the responding party was reasonable for his or her own protection or for the protection of his or another party's property.

Why was the Domestic Violence Act Passed?

The Domestic Violence Act was meant to provide protection to the wife or female live-in partner from acts of domestic violence at the hands of her husband or male live-in partner. The laws within the act also extend to protect women who are widows, mothers or sisters from acts of domestic violence.

Under the act, domestic violence includes all actual abuse or the threat of abuse, regardless of whether the actions are of a physical, sexual, economic, verbal or emotional nature. Economic domestic abuse, according to the domestic abuse act, refers to any harassment by way of unlawful dowry demands to the women or her relatives.

One of the primary goals of the domestic violence act is to secure the woman's right to obtain housing. The domestic violence act provides for the woman's right to reside in a shared household, whether or not the individual

has any title or rights to the home. This right is secured by a residence order, which is passed by a coordinating court under the Domestic violence Act.

Types of abuse under the Domestic Violence Act

The Gujrat High Court in a recent case of **Bhartiben Bipinbhai Tamboli vs. State of Gujarat and ors. 2018(1) Crimes 11 (Guj)** elaborated on the types of abuse or domestic violence under the Act. The same is enumerated below:

Physical Abuse

Physical abuse is the use of physical force against a woman in a way that causes her bodily injury or hurt. Physical assault, criminal intimidation and criminal force are also forms of physical abuse like beating, kicking and punching, throwing objects, damaging property, punched walls, kicked doors, abandoning her in a dangerous or unfamiliar place, using weapon to threaten or to hurt her, forcing her to leave the matrimonial home, hurting her children, using physical force in sexual situations.

Sexual Abuse

This is also a form of physical abuse. Any situation in which a woman is forced to participate in unwanted safe or degrading sexual activity, calling her sexual names, hurting a woman with objects and weapons during sex is sexual abuse.

Verbal and Emotional Abuse

Many women suffer from emotional abuse, which is no less destructive. Unfortunately, emotional abuse is often minimized or overlooked- even by the woman being abused. Emotional abuse includes verbal abuse such as yelling, name-calling, blaming and shaming. Isolation, intimidation and controlling behaviour also fall under emotional abuse.

Economic Abuse

Economic abuse is not a very recognized form of abuse among the women but it is very detrimental. It mainly includes a woman not been provided with enough money by her partner to maintain herself and her children, which may comprise money for food, clothing, medicines etc. and

not allowing a woman to take up an employment. Forcing her out of the house where she lives and not providing her rent, in case of a rented share hold also amounts to abuse. Depriving her of all or any economic or financial resources to which the person is entitled under the law or custom, restricting the woman's access to the shared household. Disposing or alienating the assets of the women whether movable or immovable, valuables, shares, securities, bonds and like other property in which she may have an interest. However, seeking maintenance to unjustly enrich one and that too without providing the alleged act of domestic violence is a gross abuse of the process of law.

PARTIES BY WHOM AND AGAINST WHOM RELIEFS CAN BE SOUGHT:

Who can be a complainant under the Act?

Section 2(a) of the Domestic Violence Act defines "aggrieved person" as 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.

The Domestic Violence Act not only covers those women who are or have been in a relationship with the abuser but it also covers those women who have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption.

- Any woman who is, or has been in a domestic or family relationship with the respondent and who has been subjected to domestic violence, can file a complaint under this act for redressal of her grievance.
- Any Police Officer, Protection Officer or service provider may also file a complaint with regard to Domestic Violence to be held to any women.
- Any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.
- The Act protects even those females who are sisters, widows or mothers, living together as a joint family with the respondent in a shared household.
- Even a woman in "live-in-relationship" she has to get the benefit of D.V. Act, if she fulfils certain conditions.

Women in Live-in-relationships covered under the Act

A wider meaning to an "aggrieved person" under Section 2(a) of the Domestic Violence Act was conferred by the Supreme Court in the case of **D.Veluswamy vs. D.Patchaiammal, AIR 2011 SC 479**, wherein the Court enumerated five ingredients of a live-in-relationship as follows:

1. Both the parties must behave as husband and wife and are recognized as husband and wife in front of society.
2. They must be of a valid legal age of marriage.
3. They should qualify to enter into marriage e.g. None of the partner should have a spouse living at the time of entering into relationship.
4. They must have voluntarily cohabited for a significant period of time.
5. They must have lived together in a shared household.

The Supreme Court also observed that not all live-in-relationships will amount to a relationship in the nature of marriage to get the benefit of Domestic Violence Act. To get such benefit the conditions mentioned above shall be fulfilled and this has to be proved by evidence.

Status of a Keep- The Court in the case further stated that if a man has a "keep" whom he maintains financially and uses mainly for sexual purpose and/or a servant it would not be a relationship in the nature of marriage.

In this case, the Court also referred to the term "palimony" (The term Palimony was first used by the US Court in the case of Marvin Vs. Marvin (1976) which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying and is then deserted by him.

What is shared household?

The term shared household is defined under the Domestic Violence Act as 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 either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly 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.

In the case of **S.R.Batra & Another Vs. Smt.Taruna Batra, AIR 2007 SC 1118**, the Supreme Court with reference to definition of shared household under Section 2(s) of the Domestic Violence Act stated that the definition of "shared household" in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting requires to be interpreted in a sensible manner.

The Court held that under Section 17(1) of the Act wife is only entitled to claim a right to residence in a shared household, and a "shared household" would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. In the case, the property in question neither belonged to the husband nor was it taken on rent by him nor was it a joint family property of which the husband was a member. It was the exclusive property of mother of husband and not a shared household.

Who is Respondent under the Act?

As per section **2(q) 'Respondent'** means any '**adult male person**' who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought relief under the Act. Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner.

In case of **Hiralal P.Harsora Vs. Kusum Narottamdas Harsora, AIR 2016 SC 4774**, it was held that words 'adult male person' contrary to object of affording protection to women who suffered from domestic violence of any kind and word expression '**adult male**' is substituted by '**any person**'.

In view of the definition of the term respondent covering adult male person, the judiciary has time and again been confronted with the argument that an aggrieved person can file complain under the Domestic Violence Act against an adult male person only and not against the female relatives of the husband i.e. mother-in-law, sister-in-law.

However, the Supreme Court in the case of **Sandhya Wankhede vs. Manoj Bhimrao Wankhede (2011) 3 SCC 650** put to rest the issue by

holding that the proviso to Section 2(q) does not exclude female relatives of the husband or male partner from the ambit of a complaint that can be under the provisions the Domestic Violence Act. Therefore, complaints are not just maintainable against the adult male person but also the female relative of such adult male. **(Archana Hemant Naik vs. Urmilaben I. Naik & Anr., 2009 (3) Bom Cr 851)**

Wife cannot implicate one and all in the family – Though the Domestic Violence Act is a beneficial legislation, the same has been many times reported to be misused by women. For instance, in several cases women register complaint under Domestic Violence Act against one and all relatives of husband even without any evidence of abuse against them.

In the case of **Ashish Dixit vs. State of UP & Anr. AIR 2013 SC 1077**, the Supreme Court has held that a wife cannot implicate one and all in a Domestic violence case. In this case, the complainant apart from carrying the husband and in-laws in the complaint, had also included all and sundry as parties to the case, of which the complainant didn't even know names.

It is necessary to have a clear understanding of domestic relationship. "Domestic relationship" 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 family¹⁶. Thus, a person who is not in a domestic relationship, cannot be a respondent under this Act.

TYPES OF RELIEFS:

Different kinds of orders issued by the Magistrate Protection orders

The protection order is issued under section 18 of the Act to protect the women from any further incidents of violence by prohibiting the respondent from contacting, meeting, committing violence directly or indirectly to the victim, alienating assets, bank lockers and bank accounts owned jointly or separately by the respondent and any other act that is prohibited by the protection order.

After giving an opportunity to the aggrieved person and respondent of being heard and the magistrate is satisfied that a prima facie case of domestic violence has taken place or is likely to take place, pass a protection order in

favour of the aggrieved person prohibiting the respondent from the following acts such as committing any acts of domestic violence

- Aiding or abetting in the act of domestic violence
- Entering the place of employment of aggrieved person or if the person is child, its school or any other places
- Attempting to communicate in any form including personal, oral or written, electronic or telephonic contact
- Alienating any assets, operating bank account, bank locker held or enjoyed by both parties jointly or singly by the respondent including her stridhan
- Causing violence to the dependents, or other relative or any other person who give the assistance to the aggrieved person or
- Committing any other acts specified by the protection officer

In the case of **V.D. Bhanot Vs. Savita Bhanot (AIR 2012 SC 965)**, which upheld the Delhi High Court's view that "even a wife who had shared a household before the Domestic Violence Act came into force would be entitled to the protection of the Domestic Violence Act. Hence, the Domestic Violence Act entitles the aggrieved person to file an Application under the Act even for the acts which have been committed prior to the commencement of the Domestic Violence Act.

Residence orders

The Magistrate may pass a residence order under section 19 of the Act if he is satisfied that domestic violence has taken place. The order can include restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, entering into the portion occupied by the aggrieved person, alienating or disposing of the shared household or encumbering the same, renouncing his rights in the shared household, and directing the respondent to remove himself from the shared household or arrange alternative accommodation for the aggrieved person.

The magistrate being satisfied that a domestic violence has taken place, pass residence order-

- Restraining the respondent from dispossessing or in any manner disturbing the peaceful possession of the shared household
- Directing the respondent to remove himself from the shared household
- Restraining the respondent or his relatives from entering any portion of the shared household where the aggrieved person lives
- Restraining the respondent from alienating or disposing of the shared household or encumbering it
- Restraining the respondent from renouncing his right in the shared household
- Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her or to pay rent for the same if the circumstances so require.

No order shall be made against women under this section. Magistrate may impose additional condition and pass any other order to protect the safety of the aggrieved person or her child. Magistrate is also empowered to order direction the concerned station house officer of the police station to give protection to the aggrieved person to assist in implementing his order. Magistrate may also impose on the respondent to direct stridhan or any other property or valuable security she is entitled.

Monetary relief

The magistrate may direct the respondent to pay monetary relief to meet the expenses of the aggrieved person and any child as a result of domestic violence and such relief includes:

- Loss of earnings
- Medical expenses
- Loss caused due to destruction or removal or damage of any property
- Pass order as to maintenance for the aggrieved person as well as her children if any

Including the order under or in addition to an order of maintenance under section 125 criminal procedure code or any other law. The quantum of relief shall be fair reasonable and consistent with the standard of living to which the aggrieved person is accustomed to. Magistrate can order a lump sum amount also. On failure of the respondent to make payment of this order,

magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent. Magistrate can order a lump sum amount also. On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent.

Custody orders

Magistrate can grant temporary custody of any child or children under section 21 of the Act to the aggrieved person or to the person making application on her behalf and specify the arrangements for visit of such child by the respondent. Magistrate can refuse the visit of such respondent in such case if it may harmful to the interest of the child.

Compensation order

Magistrate can order the respondent under section 22 of the Act, on an application made by the aggrieved person, to pay compensation and damages for the injuries, including mental torture and emotional distress caused by the acts of domestic violence committed by the respondent.

Copies of orders passed by the magistrate shall be supplied free of cost to the parties concerned and police officer and service provider.

Any relief available under this Act may also be sought in any other legal proceedings before a civil court, family court or criminal court and such relief may be sought in addition to and along with relief sought for in suit, or legal proceeding before civil or criminal court.

EXECUTION OF ORDERS:

The orders of the Magistrate are executed by the Magistrate himself and in the manner in which all such orders of the Magistrate are executed.

If the orders are prohibitory orders, the respondent is directed not to interfere with the freedom of the aggrieved woman.

(i) Protection order:

Section 31 of the DV Act states that a breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

In **Kanaka Raj vs. State of Kerala and another, 2010 Cri.L.J (NOC) 447 (KERALA)**, the Hon'ble Kerala High Court held that only if the order passed by the Magistrate is a protection order or an interim protection order, the Magistrate can direct registration of case and investigate the same under Section 31 of the DV Act and even if award is passed by Lok-Adalath unless made in terms of section 18 of the DV Act, it cannot be a protection order or interim protection order and breach of it will not attract the offence U/sec.31 of the DV Act.

(ii) Residence order: In order to implement the residence orders, the Magistrate is also empowered to order direction the concerned station house officer of the police station to give protection to the aggrieved person. Magistrate may also impose on the respondent to direct stridhan or any other property or valuable security she is entitled. Residence orders are passed to protect the aggrieved from the dispossession; therefore, a breach of residence order could also be an offence under section 31.

(iii) Monetary relief/Maintenance Order:

As per Rule 6 of the Protection of Women from Domestic Violence Rules, 2006, any application under section 12 of the D.V.Act shall be dealt with

and the orders enforced in the same manner laid down U/s 125 of Cr.P.C. In **Renuka vs. Yelaguresh**, the Hon'ble Karnataka High Court held that orders passed under section 12 of the Protection of Women from domestic Violence Act, 2005 can be enforced in the same manner as laid down in Section 125 of Cr.P.C.

On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent. Magistrate can order a lump sum amount also. On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent.

If the order is for maintenance the same is executed by attachment of the movable properties of the respondent. If it still remains unfulfilled the order of maintenance may be sent to the District Collector for the recovery of the amount due as if it is an arrear of land revenue, in which proceedings the Collector may attach the immovable properties of the respondent.

In **Shalu Ojha vs. Prashant Ojha, 2014(4) RCR (Civil) 815 (SC)**, the Hon'ble Supreme Court held that *where maintenance is granted by Magistrate U/s 20 of DV Act, on appeal to the court of Session, the Session Court ought not stay the execution of maintenance order. Power to grant interim orders are not always inherent in every court.*

In **Suneesh vs. State of Kerala & Anr**, the Kerala High Court held that breach of monetary relief order cannot be prosecuted under section 31, penalty attracted only for violation of protection orders.

A maintenance order including interim maintenance order passed under section 23, cannot be enforced through section 31 and it can be enforced in the same manner as laid down under section 125 Cr.P.C. Section 20(4) provides the mechanism for compliance with the maintenance order.

(iv) Custody orders:

If the order is for custody of children the Magistrate with the assistance of the police recovers their custody from the Respondent and hands them over to the aggrieved woman.

Duty of Courts while deciding cases under the Domestic Violence Act

In the case of Krishna **Bhattacharjee vs. Sarathi Choudhury and Another, (2016) 2 SCC 705**, the Apex Court while elucidating on the duty of courts while deciding complaints under the Domestic Violence Act stated that:

It is the duty of the Court to scrutinize the facts from all angles whether a plea advanced by the respondent to nullify the grievance of the aggrieved person is really legally sound and correct.

The principle "justice to the cause is equivalent to the salt of ocean" should be kept in mind. The Court of Law is bound to uphold the truth which sparkles when justice is done.

Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realization of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence.

Husband's Obligation to maintain wife under the DV Act

In a case taken up by the Supreme Court i.e. **Vimlaben Ajitbhai Patel vs. Vatslaben Ashok Bhai Patel and Ors, (2008) 4 SCC 649**, it was held that when it comes to maintenance of wife under the Domestic Violence Act read with the Hindu Adoption and Maintenance Act, 1956 it is the personal obligation of the husband to maintain his wife. Property of mother-in-law can neither be subject matter of attachment nor during the life time of husband can his personal liability to maintain his wife be directed to be enforced against such property.

Application to the magistrate

An application regarding domestic violence can be presented to the magistrate seeking one or more reliefs mentioned in sections by:

- The aggrieved person,
- Protection officer on behalf of aggrieved person
- Any other person on behalf of aggrieved person

Jurisdiction of court

The first-class magistrate court or metropolitan court shall be the competent court within the local limits of which

- The aggrieved person permanently or temporary resides or carries on business or is employed
- The respondent permanently or temporally resides or carries on business or is employed or
- The cause of action arises.

Any order made under this Act shall be enforceable throughout India While disposing application the magistrate shall take in to consideration any domestic incident report received from the protection officer or service provider. The relief sought under this section includes the issuance of order of payment or compensation or damages without prejudice to the right of such person to institute suit for compensation or damages for injuries caused by the act of domestic violence. If the magistrate is satisfied that application prima facie discloses that the respondent is committing or has committed an act of domestic violence or there is a likelihood of such violence, he may grant following ex parte interim order against the respondent on the basis of affidavit of the aggrieved person. Magistrate can issue different orders such as Protection order, residence order, monetary relief, custody order or compensatory orders as per the circumstances of the case. In case of an earlier decree of compensation or damages passed by any other court, in favour of aggrieved person, the amount if any paid shall be set off against the order of amount payable under this act. The application to the magistrate shall be as nearly possible to the formats prescribed under this Act and Rules. After receiving the application, the Magistrate shall fix the date of first hearing within 3 days and the magistrate shall endeavour to dispose of every application be within a period of 60 days of the first hearing. The notice of the date of hearing shall be given by the magistrate to the protection officer who shall get it served to the respondent. At any stage of the application, the magistrate may order, counseling of the respondent or aggrieved person either singly or jointly with any member of service provider. The magistrate may secure the service of suitable person preferably a woman including a person engaged in the welfare of women for assisting the court in the

discharge of its function. If the circumstance of the case so warrants and if either party so desires the magistrate may conduct the proceedings on camera. In the case of **Nasir Khan son of Shri Hazi Hasan Raja vs. Smt.Rizwana Sheikh wife of Shri Nasir Khan, 2018 3 RLW (Raj) 1842**, It was held by the Hon'ble Rajasthan High Court that a victim of domestic violence cannot be compelled to invoke the jurisdiction of Family Court for seeking the reliefs provided by the Act of 2005.

Some other important legal principles:

(1) Shared household & its meaning & claim of residence in the

house owned by parent-in-laws (Sec. 23)---*Mother-in-law's house or father-in-law's house is not covered with in the expression 'shared house hold accommodation'. Mother-in-law's house does not become shared house hold merely because applicant wife had shared that house with her husband earlier. For that it has to be a house owned or taken on rent by husband or a house which belongs to joint family of his husband is a member. See---*

(i) S.R.Batra Vs. Smt. Taruna Batra, AIR 2007 SC 11184

(ii) Vimla Ben Ajitbhai Patel Vs. Vatsalaben Ashokbhai Patel, (2008) 4 SCC 649.

(2) Self acquired house of father-in-law or mother-in-law & right of

residence of wife therein-- *Daughter-in-law would have no right to claim residence in self-acquired house of parents-in-law i.e. father-in-law (or mother-in-law) u/s 17 & 26 of the PWDO Act, 2005. Parents-in-law being absolute owners of such house, injunction in their favour restraining the daughter-in-law from dispossessing parents-in-law from their house can be granted. See---* **Shubhwant Kaur Vs. Lt.col.Prithi Pal Singh Chugh, AIR 2010 (NOC) 638(P & H).**

(3) Claim of wife to alternative accommodation--- U/s 19(1) of the

PWDO Act, 2005, claim of right to alternative accommodation by wife can be made to husband only. See--- **S.R.Batra Vs. Smt.Taruna Batra, AIR 2007 SC 1118.**

- (4) Retention of Stridhan by husband or his family amounts to continuing Offence under the Protection of Women from Domestic Violence Act, 2005:** Retention of Stridhan by husband or his family amounts to Continuing Offence under The Protection of Women from Domestic Violence Act, 2005. See--- **Krishna Bhattarjee Vs. Sarathi Choudhury, (2016) 2 SCC 705.**
- (5) Gay & Lesbians not recognized to constitute a relationship in the nature of marriage :** Domestic relationship between same sex partners (Gay and Lesbians) is not recognized by Act. Such a relationship cannot be termed as a relationship in the nature of marriage. Section 2(f) of the DV Act though uses the expression "any two persons" the expression "aggrieved person" under S. 2(a) takes in only a woman hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act See--- **Indra Sarma Vs V.K.Sarma, AIR 2014 SC 309 (para 38).**
- (6) Divorce decree bars proceedings by Magistrate under the PWDV Act, 2005:** Where the decree of divorce passed by Civil Court was still subsisting, it has been ruled by the Hon'ble Supreme Court that permitting Magistrate to proceed further under the provisions of the PWDV Act, 2005 was not in consonance with the decree of divorce and the proceedings amounted to abuse of the process of the court. Even if the divorce decree is alleged to have been obtained by playing fraud upon the court, the party has to be approach the appropriate forum for cancellation of the same. See---
- (i) Inderjit Singh Grewal Vs. State of Punjab & another, 2011 (75) ACC 225.**
- (ii) Hitesh Bhatnagar Vs Deepa Bhatnagar, AIR 2011 SC 1637.**
- (7) No limitation period for filing complaint under PWDV Act, 2005:** There is no limitation period for filing complaint under PWDV Act, 2005. See--- **Inderjit Singh Grewal Vs. State of Punjab & another, 2011 (75) ACC 225.**

(8) Court can permit amendment in a complaint filed u/s 200 Cr.P.C r/w Sections 26 & 28 of PWDV Act: Court can permit amendment in a complaint filed u/s 200 Cr.P.C. r/w Sections 26 & 28 of PWDV Act for offence u/s 498 of the IPC. **Kunapareddy alias Nookala Shanka Balaji Vs. Kunapareddy Swarna Kumari, AIR 2016 SC 2519.**

Conclusion

The Protection of Women from Domestic Violence Act, 2005 is enacted with a noble intention to provide effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family but protection of one must not result in harassment of other, therefore, while protecting the rights of aggrieved person courts has to make a balance between the conflicting interests. Courts have to address the areas which are still untouched and issues can be settled only by a positive approach so that we the people of India strive towards excellence.

I conclude my paper presentation with famous Sanskrit sloka

"Yatra Naryastu Pujyante Ramante Tatra Devata;

Yatra itaastu Na Pujyante Sarvaastatrafalaah Kriyaah" i.e.,

"Where women Are Honoured, Divinity Blossoms There;

And Where They Are Dishonoured, All Action Remains Unfruitful"
