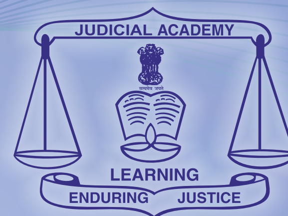

READING MATERIAL

WORKSHOP
ON
"PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE"

Organised by :

Jharkhand Judicial Academy

&

Jharkhand State Legal Services Authority

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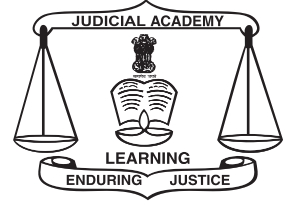

READING MATERIAL

WORKSHOP
ON
"PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE"

Date : 18th January, 2015 (Sunday)

Venue : Nyaya Sadan, Doranda, Ranchi

Organised by :

Judicial Academy Jharkhand
&
Jharkhand State Legal Services Authority

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List of Abbreviations

CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979
CMA	Christian Marriage Act, 1872
CPC	Code of Civil Procedure, 1908
CrPC	Code of Criminal Procedure, 1973
DEVAW	United Nations Declaration on Violence against Women, 1993
DIR	Domestic Incident Report
DMMA	Dissolution of Muslim Marriages Act, 1939
DPA	Dowry Prohibition Act, 1961
FIR	First Information Report
GWA	Guardians and Wards Act, 1890
HAMA	Hindu Adoption and Maintenance Act, 1956
HMA	Hindu Marriages Act, 1955
HMGA	Hindu Minority and Guardianship Act, 1956
HSA	Hindu Succession Act, 1956
IDA	Indian Divorce Act, 1869
IEA	Indian Evidence Act, 1872
IPC	Indian Penal Code, 1860
LCWRI	Lawyers Collective (Women's Rights Initiative)
MWA	Muslim Women (Protection of Rights on Divorce) Act, 1986
NCR	Non-Cognisable (Offence) Report
NGO	Non-Governmental Organisation
PC & PNDT Act	Pre-Conception and Pre-Natal Diagnostic (Prohibition of Sex Selection) Act, 1994
PCMA	Prohibition of Child Marriages Act, 2007
PMDA	Parsi Marriage and Divorce Act, 1936
PO	Protection Officer
PWDVA	Protection of Women from Domestic Violence Act, 2005
PWDVR	Protection of Women from Domestic Violence Rules, 2006
SMA	Special Marriages Act, 1954
SP	Service Provider

STANDARD PRACTICE DIRECTIONS FOR THE EFFECTIVE IMPLEMENTATION OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

— Prepared by Lawyers Collective Women's Rights Initiative

Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate position compared with men– Declaration on Elimination of Violence against Women, 1993

The Protection of Women from Domestic Violence Act, 2005 (herein after referred to as "the PWDVA") is an Act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

The key features of PWDVA are as follows:

- A clear declaration of the basic intent of the law, namely the prevention of domestic violence
- A clear and unambiguous statement of the right of women to be free from domestic violence and the recognition of domestic violence as violation of the human rights of women.
- A definition of domestic violence that captures women's experience of abuse in its manifold form.
- A recognition of a woman rights to reside in the shared household and her protection from illegal dispossession
- Access to immediate orders to prevent further acts of violence, to provide remedies for violence faced and to prevent destitution of women
- Infrastructure available to women to facilitate access to justice both in terms of courtmandated remedies and other support services.
- Provision for coordinated response to domestic violence by recognizing and building upon the experience of other agencies that have traditionally provided assistance to women in distress.

Jurisdiction vested on the Magistrate (Metropolitan Magistrate/JMFC).[1]

The Courts have been vested with considerable powers to adopt appropriate procedure, and an implementing structure at its disposal to ensure efficacious and emergency reliefs to women facing domestic violence. The Protection officers who are vital link between the Court and Aggrieved person are in direct control and supervision of the Magistrate. In accordance with the objective of providing emergency reliefs, aggrieved person can directly approach the court with complaints of domestic violence[2]. However, applications under this law may also be filed in pending proceedings[3].

1 Section 12(1) read with Section 2(i),
2 Section 12
3 Section 26

Overview of the Act:

The PWDVA is a civil law that defines domestic violence, recognizes women's rights to reside in a violence-free-home and provides remedies in cases of violation of this right.

The PWDVA operates in addition to all other existing criminal and civil laws.

PWDVA can be broadly divided into five components:

(i) Preamble or Statement of Objects and Reasons

(ii) Definitions

(iii) Rights and remedies

(iv) Mechanisms for implementation

(v) Procedures to be adopted by the Magistrate during the proceedings under section 12 and for the enforcement of orders.

I) Preamble or Statement of Objects and Reasons:

In its Statement of Objects and Reasons, the PWDVA recognizes domestic violence as a serious human rights concern and deterrent to development. It further mentions that since existing criminal law does not address this phenomenon in its entirety, there is a need to enact a civil law aimed, "to provide for more effective protection of rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family".

II) Definitions

Definitions provide the coverage and ambit of the law: i.e., to whom the law applies, the acts prohibited under the law and the authorities vested with the responsibility of implementing the law.

In the PWDVA, definitions are provided in Sections 2 and 3. Section 2 demarcates the coverage of the PWDVA, which includes:

(i) Aggrieved person[4]–defines who can initiate proceedings under the PWDVA. This includes:

1. Any women who allege that they have faced domestic violence from the respondent/s
2. Any woman on behalf of the child
3. Any other person on behalf of the aggrieved person including the Protection officer.

For the purpose of this section:

Child[5] being defined as "any person below the age of eighteen years and includes any adopted, step or foster child[6]", and is gender neutral.

(ii) Respondent defines the person against whom proceedings can be initiated under the PWDVA.

The said definition[7] includes:

a) Adult male person who is, or has been in a domestic relationship with the aggrieved person.

4 Section 2(a)
5 Section 2(b)
6 Section 2(b)
7 Section 2 (q)

b) Relatives of the husband or male partner of the aggrieved person.

In Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and Ors[8], the Supreme Court held that a woman could be a respondent under PWDVA.

Para 13 – *the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make specific to males only.*

Thus the term "relative" used in this definition includes female members of the husband's family or male partner of the aggrieved person and said expression has not been restricted to males only[9].

(iii) Domestic Relationship[10]

The elements of domestic relationship are:

1) The relationship must be between two persons who

a) live or

b) **have at any point lived** together in a shared household

The expression "who live or at any time have lived together" protects the rights and ensures reliefs under the Act to women who have been dispossessed or thrown out of their shared household.

Thus, on the basis of the said definition,

- Any woman, who has been in the past, in domestic relationship with the Respondent would be entitled to invoke the provisions of the Act[11].
- **Divorced Woman** can also invoke the provision of PWDVA since she was in a domestic relationship with the Respondent[12].

2) **The two persons must be related through marriage or a relationship in the nature of marriage, consanguinity, adoption, or are family members living together as a joint family.**

Thus any woman, irrespective of her religion, who is in a:

1. Natal relationship
2. Marital relationship
3. Relationship in the nature of marriage
4. Women who were in the past in domestic relationship with the Respondent which includes divorced women
5. Women who are family members living together as a joint family

Relationship in the nature of marriage:

The PWDVA , "a relationship in the nature of marriage" includes :

8 MANU/SC/0081/2011
9 Ibid.
10 Section 2(f)
11 Maroti s/o Dewaji Lande v. Sau Gangubai w/o Maroti Lande and Prashant s/o Maruti Lande, Bombay High Court [Criminal Writ petition No. 542/2010] [MANU/MH/1763/2011]and Karim Khan v. State of Maharashtra through PSO and Nahid Akhtar, Bombay High Court [MANU/MH/0990/2011]
12 Bharti Naik v. Ravi Ramnath Harlarnkar and Anr , Bombay High court [III (2011) DMC 747 2010, MANU/MH/2048/2010]

a. Women who are in relationships of cohabitation or live-in-relationships: In D. Velusamy v. D. Patchaiammal[13], Supreme Court noted that "in our opinion a relationship in the nature of marriage is akin to a common law marriage. Common law marriages requires that although not being formally married:

  a. The couple must hold themselves out to society as being akin to spouses

  b. They must be of legal age to marry

  c. They must be otherwise qualified to enter into a legal marriage, including being unmarried

  d. They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time"

Presumption: Where the partners have lived together for a long spell as husband and wife, a presumption would arise in favor of a valid wedlock[14]

b. **Women in an annulled marriage –** The spouses who lived together for sometime in an annulled marriage can certainly be held to have shared a domestic relationship as defined under sec 2(f) of DVA[15].

c. **Women in marriages which are void or viodable in law, where all other elements of marriage exists -** Second wife have been held to be entitled to maintenance under section 18 of Hindu Adoptions and Maintenance Act[16]

(iv) Shared household[17] is the household where the aggrieved person lives or at any stage has lived in a domestic relationship either singly or along with the respondent[18].

Shared household includes households:

- That are owned or tenanted either jointly by the AP and the Respondent, or by either of them;
- Where either aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity or
- Which may belong to the joint family of which the respondent is a member, irrespective of whether either of them have any right, title or interest in the shared household.

In S.R. Batra & Anr V. Taruna Batra[19], the Supreme Court interpreted the expression of the shared household under section 2(s) of PWDVA and held that an aggrieved wife has the right to reside in the shared household, which was held to mean a house belonging to

13 MANU/SC/0872/2010

14 Chanmuniya v. Chanmuniya Virendra Kumar Singh Kushwala and Anr., Supreme Court, [2011 (1) ALD (Cri) 370, MANU/SC/0807/2010]

15 T.K. Surendran P. Najima Bindu & Ors, Kerala High Court, [MANU/KE/0682/2012] – In this case, the Hon'ble Court while deciding an issue whether the wife in voidable marriage under section 12 of the Hindu Marriage Act is entitled to claim maintenance under section 125 CrPC and can the statutory compassion in favour of the woman in distress in a terminated marriage and the legislative anxiety and concern to prevent vagrancy against women persuade courts to bring such woman in an annulled marriage within scope of the definition of deemed wife in explanation to sec 125 CrPC , the High Court took a recourse to definition of domestic relationship in section 2 (f) of PWDVA and held that spouses who have lived together for sometime in an annulled marriage can certainly be held to have shared a domestic relationship as defined under section 2(f) of DV Act.

16 Narinder Pal Kaur Chawla V. Manjeet Singh Chawla , Delhi High Court [AIR 2008 Delhi 7] ,Suresh Khullar V. Vijay Kumar Khullar, Delhi High Court [AIR 2008 Delhi 1, MANU/DE/8505/2007] and Sau Manda R. Thaore, w/o Sh. Ramaji Ghanshyam Thaore v. Sh. Ramaji Ghanshyam Thaore, Bombay High Court [Criminal Revision Application No. 317/2006, MANU/MH/0427/2010]

17 Section 2(s)

18 V. D. Bhanot v. Savita Bhanot, Supreme Court in Special Leave Petition (Crl) No. 3916 of 2010.

19 SR Batra v. Taruna Batra, Supreme Court, [MANU/SC/007/2007]

or taken on rent by husband, or house which belongs to joint family of which husband is a member.

Following are the circumstances in which Hon'ble High Courts have held that the aggrieved person has the right to reside in the shared household:

1. Where the property is in the name of husband and the in-laws, the wife has a right to reside[20]
2. Where the property was owned by the husband but has subsequently been transferred in the name of the in-laws, with intention to deny the wife's rights, the women has a right to reside in shared household[21]
3. Where the husband has a right, title or interest in the property for the purpose of section 17 of PWDVA[22] is shared household and hence the aggrieved person has a right to reside in the shared household.
4. In Eveneet Singh v. Prashant Choudhury and Kavita Choudhury v. Eveneet Singh[23], the Delhi High Court, while distinguishing the facts from Batra v. Batra, also pointed out that "in Batra, the dispute did not emerge or emanate from any provisions of the Domestic Violence Act;"

III) Rights and Remedies:

The PWDVA recognizes three important rights:

- Right to be free from violence, which is to be inferred from the definition of domestic violence contained in section 3
- Right to reside in the shared household as recognized in section 17 of the Act.
- Right to seek remedies as provided in section 12

Remedies prescribed are in the form of orders that can be obtained from the Courts:

1) Protection orders[24]

- Injunctive orders to prevent domestic violence or the commission of any act that adversely affects the aggrieved person's right within home
- Protection orders are chiefly in the nature of the "Stop Violence" orders designed to put an end to additional acts of violence by the Respondent against the Aggrieved person and/ or acts that adversely impact on her rights as recognized under PWDVA.
- Threat of violence is sufficient[25] for granting Protection Order

  Thus protection order can be issued upon a bonafide threat of violence or the reasonable apprehension of its occurrence. It is not necessary that the domestic violence has already occurred.

  - Protection order should be granted in addition to the other reliefs under PWDVA

2) Residence orders:

Section 17 recognizes right to reside and 19 of PWDVA provides residence orders to

20 Jyotsana Sharda v. Gaurav Sharda, Delhi High Court [Criminal Revision petition No. 132 and 133/2009, MANU/DE/3520/2009]
21 P. Babu Venkatesh and Ors V. Rani, Madras High Court, [MANU/TN/0612/2008]
22 Rajkumar Rampal Pandey v. Sarita Rajkumar Pandey, Bombay High Court [MANU/MH/1295/2008]
23 MANU/DE/3497/2010
24 Section 18
25 Section 3 (c) defines "domestic violence" to include an act or conduct that ' has the effect of threatening the aggrieved person or any person related to her'.

prevent the aggrieved person's dispossession as well as to prevent any act that adversely affects her peaceful occupation of the shared household.

In *Vandana V. T. Srikant Krishnamachari and Anr*[26], Madras High Court has held that where the husband has a right, title or interest in the property for the purpose of section 17 of PWDVA is shared household, it is immaterial whether the parties have cohabitated in the said property. In such cases, by virtue of being wife, the aggrieved woman has a de jure right of residence in shared household.

A residence order is sought in cases where

a) The aggrieved person apprehends dispossession or

b) She is already dispossessed and seeks to be restored to the shared household

In Ishpal Singh Kahai v. Ramanjeet Kahai, Bombay High Court[27], while upholding the injunctions orders by the Family Court directing the Respondent to remove himself from the shared household has made specific note on right to residence - *The Human right of a person has little to do with her ownership rights in property. It is therefore immaterial to consider in whose name the matrimonial home stands. In a case of domestic violence the court has only to appreciate the abuse and protection against such abuse.*

Section 17 of the PWDVA recognizes:

- Right to reside in shared household irrespective of right, title or ownership over, interest over the property[28]
    - It puts the woman's personal rights over proprietary interest of the Respondent, even if Respondent/s have title over the property
    - Residence order not only contains within itself injunction for protection against her dispossession, but statutorily follows as matter of corollary, the order of injunction for removal of the violator from such household and thereafter restraining him from entering thereto.
    - Such order of removal or injunction restraining him form entering in the shared household is therefore conditioned upon this abusive behavior violating the person of his wife or any woman in domestic relationship and not upon his proprietary rights therein.
    - No woman may however, be directed to remove herself from the shared household[29]
- Further section 19 apart from other reliefs also empowers the Magistrate:
    - to reinstate the women in the shared householdError: Reference source not found
    - To issue injunctive directions restraining the Respondent from dispossessing the Aggrieved person from the shared household[30]

This Section shall be read in conjunction with the definition of the shared household.

3) Monetary relief:

Section 20 of PWDVA

- Provides for monetary orders.

26 (2007) 6 MLJ 205 (Mad)
27 MANU/MH/0385/2011
28 Ishpal Singh Kahai V. Mrs. Ramanjeet Kahai, Bombay High Court [MANU/MH/0385/2011]
29 Section 19(1)(b) proviso r/w Section 2(q) proviso
30 Section 19(1)(a)

- The aim of this provision is to ensure that women facing domestic violence have adequate financial support and are not rendered vulnerable due to their financial dependence on male members of the family.
- It is powerful tool for ensuring gender equality in economic terms. It does not contain any exception in favour of husband and in fact it recognizes moral and legal duty of the husband to maintain his wife.[31]

The reliefs available under this provision can be broadly divided into two parts:

i) Payment for losses and expenses incurred as a consequence of domestic violence;

ii) Payment for maintenance to meet daily needs and expenses of the aggrieved person and her children

Payment for losses and expenses incurred as a consequence of Domestic Violence[32]

Under this category, the aggrieved person may seek orders directing the respondent to pay for:

(i) Loss of earnings due to domestic violence.

(ii) Medical expenses incurred to treat injuries sustained as a result of domestic violence, which includes treatment for both physical and mental injuries.

(iii) Loss of property.

(iv) Any other loss sustained as a result of domestic violence.

Payment of maintenance:

Section 20(1) (d) of the PWDVA specifies that the amount of maintenance granted can be in addition to maintenance / amount received on an order under any of other laws[33].

Quantum of Monetary Relief

Section 20(2) of the PWDVA provides that monetary relief under both categories – i.e. payment for loss and payment for maintenance

- has to be "adequate, fair, reasonable and consistent with the standard of living to which the aggrieved person is accustomed[34]" In Jasbir Kaur Sehgal v Dist. Judge Dehradun, the Supreme Court opined, "no set formula can be laid down for fixing the amount of maintenance. It has in the very nature of things to depend on the facts and circumstances of each case. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case."
- It can be granted irrespective of whether she has separate income of her own or not. [35]
- It can be granted irrespective of whether the aggrieved person is currently living with the husband or not.[36]

4) Orders granting temporary custody of children

31 Sukrit Verma and ANr V. State of Rajasthan, Rajasthan High Court (Jaipur Bench) [MANU/RH/0337/2011], Om Prakash v. State Rajasthan, Rajasthan High Court (Jaipur Bench) [MANU/RH/0324/2011]

32 Section 20(1) (a),(b) and (c)

33 Rajesh Kurre V. Safurabai & others, Chattisgarh High Court at Bilaspur in Criminal Misc Petition No. 274 of 2008

34 [(1997) 7 SCC 7, MANU/SC/0835/1997]

35 Anup Avinash Varadpande v. Anusha Anup Varadpande, Bombay High Court, [MANU/MH/0042/2010]

36 Om Prakash v. State of Rajasthan & Anr [MANU/RH/0324/2011] it was said, " the Act does not require that the aggrieved person must stay with the offending husband. Hence, merely because the Respondentwife is not staying with the Petitioner-husband, it would not absolve the husband from his liability under the Act."

The PWDVA deals only with temporary custody of children

- as an urgent measure to ensure that the Aggrieved person is not harassed by denying access to the children
- To protect the children
- To ensure that they are not used pawns to coerce the woman to stay in a violent domestic relationship.

It is important to emphasize that custody orders are temporary in nature and that issues of permanent custody have to be decided in accordance with provisions of the Personal law applicable to the aggrieved person or the Guardianship and Wards Act.

The best interest of the child shall be of paramount consideration to decide the temporary custody of the child.

5) Compensation order

For mental and emotional distress caused to the aggrieved person, which are in addition to orders for monetary relief.

The amount of compensation can be determined by the Court after assessing the facts and circumstances of the case and the extent of injuries sustained.

IV) Mechanisms for Implementation

(i) Protection Officers[37](PO):

- Serve as vital link between the Court and women i.e. the aggrieved person.
- Facilitate a woman's access to court remedies and other support services. In addition, POs are vested with the responsibility of assisting the Court in the discharge of its functions.

(ii) Service Providers[38] (SP):

- Organizations, registered under the PWDVA, that provide assistance to aggrieved persons in terms of shelter, counseling, legal aid, medical aid, vocational training, etc[39].
- SPs are also authorized to receive and record complaints of domestic violence and to conduct Court directed counseling as provided under Rule 14

(iii) Medical Facilities (MF):

- Those facilities notified under the PWDVA by State Governments.[40]
- Notified medical facilities cannot refuse to provide medical aid to an aggrieved person.[41] They are also authorized to record DIRs.[42]

(iv) Shelter Homes (SH):

- Those notified under the PWDVA by the State Governments under the PWDVA. Notified shelter homes cannot refuse to provide shelter to an aggrieved person[43].

(v) Police:

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37 Section 8
38 Section 2 (r)
39 Section 10
40 Section 2(j)
41 Section 7
42 Rule 17(3)
43 Rule 16 (2)

- Police are duty bound to provide information to the aggrieved person about the rights and remedies provided under PWDVA, facilitate her access to the PO[44], initiate criminal proceedings when needed and act on the directions of the Court to provide protection and to assist in the enforcement of orders[45].

(vi) Legal aid lawyer:

- To provide free legal aid to the aggrieved person[46].
- To ensure effective legal representation in the court to effectuate her rights under PWDVA

V. Procedure to be adopted by the Magistrate under the PWDVA:

I) Domestic Incident Report:

The aggrieved person may approach PO, SP and MF with the complaint of domestic violence. This complaint is required to be recorded in the appropriate format – as a Domestic Incident report[47]

- Domestic Incident Report is report made in the prescribed form on the receipt of complaint of domestic violence from an aggrieved person by PO, SP and MF.[48]
- It acts as a record of domestic violence.
- Section 12(1) requires the Magistrate to take into consideration the Domestic Incident report.

However the Domestic Incident Report is not mandatory for passing orders and/ or shall be taken into consideration only in cases where it has been filed.[49]

II) Application:

The Magistrate may receive an application under section 12 of the PWDVA with or without the DIR from[50]:

1. Aggrieved person
2. Protection officer
3. Service provider
4. Woman on behalf of the child
5. Any other person on behalf of the Aggrieved person

Since the PWDVA is in addition to and not in derogation of any other law, the aggrieved person can also make an application for reliefs under PWDVA, in any pending litigation[51].

III) Ex-parte ad interim Orders:

Before issuing notice to the Respondent/s, the Magistrate may pass an ex-parte ad interim order on the basis of affidavit[52]:

a. On prima facie disclosure of commission of domestic violence or;

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44 Section 5
45 Section 19(5) & (7)
46 Rule 5(d)
47 Form I
48 Rule 5(1) and (2) and 17 (3) r/w Form I of PWDVR
49 Shambhu Prasad Singh v. Manjari, Delhi High Court [MANU/DE/0899/2012] , Nand Kishor v. Kavita and Anr, [MANU/MH/0957/2009]
50 Milan Kumar Singh & Anr V State of Uttar Pradesh,2007 Cri LJ 4742 [MANU/UP/0827/2007]
51 Section 26
52 Section 23(2) r/w Form III. Affirmed in Preceline George @ Antony Preceline v. State of Kerala & ors Kerala High Court at Ernakulum in WP (C) No. 30948 of 2009 (Q) and Sri Sujoy Kumar Sanyal V. Smt Shakuntala Sanyal (Haldar) and Anr. , Calcutta High Court , (MANU/WB/0597/2010)

b. If there is likelihood that the Respondent may commit domestic violence.

Note: Prima facie does not mean a case proved to the hilt but one which can be said to be established if the evidence in its support were to be believed.[53] Further the term 'likelihood' should be measured against the reasonable apprehension of the aggrieved person.

The above elements under Section 23(2) are to be read with the general principles for grant of ex parte *ad interim* orders, which include[54]:

- If urgent orders are warranted on facts and circumstances of the case Delay would defeat the purpose where an order is absolutely necessary to protect the aggrieved person or to prevent any domestic violence or to preserve the then existing position.

IV) Service of Notice

i) Once the application is filed, the Court shall issue notice to the Respondent to appear in the court.

Section 13(1) of the PWDVA prescribes that the notice shall be given by the Magistrate to the PO, who will get it served by means as prescribed.

The means are further prescribed under Rule 12(2), which provide that the notice can be served either by the PO or any other person on her/ his behalf. The Rule specifically states that for service of notice, the procedure prescribed under the CPC or CrPC, as far as practicable, may be adopted[55].

In view of the above, the court may direct the notice to be served upon the Respondent, either :

a. By the PO, with assistance from police officer of the concerned police station. In such cases, the PO shall provide a declaration of such service[56].

b. Directly by the Police officer of the concerned Police station.

In view of the unambiguous mandate in Section 13(1), the courts should not direct the Aggrieved person to handover the notice to the PO or the Police officer of the concerned police station, as the case may be. The notice should be directly sent to the Po/ Police officer of the concerned Police station, as the case may be.

ii) For the Respondents staying abroad or for interstate service, notice served through email / fax shall suffice and print out/acknowledgment of the same shall be adequate proof of notice[57]

Time limit for service:

a. The notice must be served, not later than two days, from the date on which it was received by the PO/Police.[58]

b. That the Police officer of the concerned police station or PO, as the case may be, is required to submit acknowledged copy of the Form VII to the Court before the next date of hearing.

53 United Commercial Bank case V. Bank of India (1981) 2 SCC 766, AIR 1981 SC 1426; Bangalore Woolen, Cotton and Silk Mills Co Ltd V. B. Dasappa AIR 1960 SC 1352

54 Supra at 52

55 Rule 12 (2) (c)

56 Rule 13(2)

57 The Delhi High Court in its Practice Direction (No. 29/Rules/DHC) dated 9th September, 2010 has stated that where email addresses of parties are available, process shall also be sent through email, in addition to other modes of service.

58 Section 13 (1) of PWDVA

c) Next date of hearing:

a) The court should fix the next date of hearing within three days from the court's receipt of application under section 12.[59]

b) In case where the parties are from different states, fifteen days time should be fixed and notice should be served at least 3-5 days prior to date of hearing

V) Ex parte or interim orders should be passed, after service of notice:

a) On non-appearance of the Respondent: If the notice is duly served and the Respondent fails to appear or file his written statement, the Court may pass an exparte order on the basis of affidavit[60]

b) On appearance of the Respondent:

On the first date of appearance, he/ they shall file the written reply/ proceed to argue orally to the notice to show cause issued by the Court.

After hearing the party/ies the Magistrate shall pass interim orders on the basis of affidavits[61] In Morgan Stanley Mutual Fund v. Kartick Das with Arvind Gupta v. Securities and Exchange Board of India and Ors, Supreme Court[62], it was held that while passing interim orders, the following factors may be taken into considerations:

- Whether irreparable or serious mischief will ensue to the aggrieved person if the application is not granted
- Whether refusal to grant orders would involve greater injustice than grant of it would entail

VI) During the proceedings:

a) Adjournments:

- Magistrate should avoid unnecessary adjournments to the Respondent/s that would delay the disposal of the case

b) Re-issuance of notice for subsequent hearings, after the appearance of the Respondent:

- Once the notice has been duly served and after appearance of the Respondent, for subsequent hearings, the court shall not re-issue notice to compel the appearance. This would exacerbate the possibility of delays in the completion of proceedings.

c) Effective use of machineries under the Act:

i) Direction to the PO:

The magistrate may direct the PO

a. To be present for each and every date of hearing of proceedings under PWDVA

59 Section 12 (5)
60 section 23(2) r/w Form III
61 Interim orders are the orders which are passed at the appearance of the Respondent as provided under section 23 (1) of the PWDVA.
62 [MANU/SC/0553/1994]

b. To conduct a home visit and make preliminary inquiry prior to passing any orders[63].

The court while directing the PO to conduct the Home visit / enquiry must specifically state:

- The exact purpose and details of such home visit and specify the date for submission of report.
- Specifically direct the Police to assist and accompany the PO, should the PO be under an apprehension of threats of violence or coercion at the time of Home Visit/ enquiry.

c. To conduct an enquiry into assets, emoluments , bank accounts and assets and other documents of the Respondent/s and other financial details of respondent/s and file a report within the time as may be prescribed by the Court[64].

d. To restore the possession of personal effects belonging to the aggrieved person, with a specific direction to the Police officer of the concerned Police station to assist in the implementation of such order[65].

e. To assist the aggrieved person to regain custody of her children, with specific direction to the Police officer of the concerned Police station to assist in the implementation of order[66]

ii) Counseling and/or mediation

Section 14 (1) of PWDVA empowers the Magistrate to direct either or both parties to counseling at any stage of proceedings. Rule 14 further lays down the conditions under which such counseling is to be conducted. As part of this scheme for court-directed counseling, sub-rules (7), (9), (11), (12), (13) & (14) of Rule 14 envisage efforts to arrive at a settlement between the parties, only if the aggrieved woman so desires.

On a combined reading of Section 14 r/w Rule 14:

- The Court may direct the parties, jointly or singly for counseling. Counseling should be directed only after an interim order(s), specifically interim protection and residence order (if sought), have been passed.
- The free and informed consent of the woman for counseling should be taken into consideration prior to directing the parties for counselling
- During the stage of counseling, should the aggrieved person be desirous of arriving at a settlement, the Counselor shall make efforts in this regard[67], bearing in mind the procedure laid down in Rule 14.
- In case the parties arrive at a settlement during the course of counseling, the Court shall follow the procedure as laid down under Rule 14, and pass an order recording the terms of the settlement. Care must be taken to ensure the efficacy of the solution, which should also include ensuring that the aggrieved person has not been coerced into such settlement.[68]

63 Rule 10(1)
64 Rule 10(1)(b)
65 Section 19(8)
66 Rule 10(1)(d)
67 Rule 14(7)
68 Rule 14(13) & (14)

- For the purpose of court directed counseling, services of service provider shall be utilized[69].

The Court may also direct the parties to mediation[70] for settlement, should the aggrieved person be so desirous[71], without requiring the parties to first undergo counseling. However, in such cases too, the specific principles laid down under Rule 14 for arriving at a settlement, and recording of terms of settlement must be followed.

VII) While passing final orders:

- The courts shall follow summary procedure as prescribed under Sections 262-264 CrPC. Towards this, for purposes of the proceedings; it shall as far as possible, pass orders on the basis of affidavits.
- While passing final orders, where facts have already been admitted, no cross-examination may be required[72].
- The Magistrate should record substance of evidence in all cases, tried summarily. Particular care must be taken in this regard in cases in which appealable sentence are likely to be passed.[73]
- The Magistrate should record the order/judgment with a brief statement of supporting reasons[74].
- The Magistrate should endeavor to dispose off the application within 60 days from the date on which it was filed under Section 12 of the PWDVA[75].

VIII) Enforcement of orders

The following measures shall be adopted by the Courts to ensure enforcement of orders passed under PWDVA:

1) Rule 15 (7) provides that any resistance to the enforcement of the orders of the court under the Act by the Respondent or any other person purportedly acting on his behalf shall be deemed to be breach of the protection order or an interim protection order covered under the Act. Thus every order shall state that the breach of the order/s shall be deemed to be criminal offence under section 31 of PWDVA[76].
2) **For the purpose of providing protection to the aggrieved person**, the Magistrate may direct the Police officer of the concerned police station to give protection to the aggrieved person and her dependants[77].
3) **For the purpose of implementation of orders,**
   - The Magistrate may direct the Police officer of the concerned police station to assist the aggrieved person and/ or PO in the implementation of orders[78][79].
   - May direct the Protection officer, to restore the possession of personal effects

69 Rule 14
70 As per Section 89, CPC and in consonance with the Civil Procedure – Alternate Dispute Resolution and Mediation Rules of High Court of Bombay.
71 Supra at 65

72 Section 156, CrPC
73 Chapter 3, Maharashtra Criminal Manual, 2007
74 Section 265(1), CrPC
75 Section 12(5)
76 Rule 15(7). For details on Breach of protection order, see the following sub-section VIII) Breach of Protection Order under Section 31 PWDVA
77 Section 19(7)
78 P. Babu Venkatesh and Ors V. Rani, Madras High Court, [MANU/TN/0612/2008] wherein it was held that residence order is one of the protection order and the Police was directed to break open the lock of the house and provide protection to the aggrieved person to reside in the shared household.
79 Section 19(5)

belonging to the aggrieved person with specific direction to the police officer of the concerned police station to assist in the implementation of order.[80]

- May direct the Protection officer to assist the aggrieved person to regain custody of her children or supervise the visits with specific direction to the Police officer of concerned police station to assist in the implementation of order[81].
- May direct the Respondent/s to execute bond, with or without sureties, for preventing domestic violence[82].

5) For the purpose of compliance of orders:

- The Court may direct the PO to file a compliance report of the orders passed within prescribed time limit
- Any other measure that would effectuate better and effective enforcement of the orders.

IX) Breach under section 31 of the PWDVA:

- Sections 18 – 22 of PWDVA should be read together, a violation of any order shall be considered to be cognizable offence and resistance to enforcement shall be considered as breach under section 31 of PWDVA[83].
- Complaint under section 31 of PWDVA shall be tried by the same Magistrate[84] without affecting the proceedings of the main application under PWDVA
- All such breach proceedings shall be separated from the main application under section 12 of PWDVA.
- Proceedings under section 31 of PWDVA shall be tried summarily in accordance with the provisions of Chapter XXI of the Code of Criminal Procedure, 1973 (2) of 1974.[85]
- Sole testimony of the aggrieved person under section 32(2) of the PWDVA shall be adequate and PO may also be examined, for the limited purpose of any reports that he/ she might have filed in the Court.
- Where the complaint of breach under section 31 discloses an offence under section 498A,
- IPC or any other cognizable offence not summarily triable, the Magistrate should first frame the charges as mandated under section 31 (3) of PWDVA and separate the proceedings[86].
- The other offences other than section 31 shall be tried in manner ordinarily prescribed under the law.

X) Appeal:

- The courts shall not halt the proceedings and/ or stop the execution of the order/s in the lower court, unless the higher Judiciary has granted a specific stay order.

80 Section 19(8)
81 Rule 10(1)(d)
82 Section 19(3)
83 Rule 15 (7)
84 Mrs. Pramodini Vijay Fernandes V. Vijay Fernandes, Bombay High Court, Writ Petition No. 5252 of 2009
85 Rule 15 (6)
86 Rule 31(6)

XI) Monitoring the implementation of PWDVA

- All the Magistrate courts and Sessions Court shall provide a monthly report on progress of cases under PWDVA to the Bombay High Court along with copy to the Women and Child Development Department, Maharashtra .
- Such monthly report shall include number of cases filed, number and kind of orders passed; number of application disposed off and time duration for the same, details about the enforcement orders, especially under section 31.

❑❑❑

Introducing the Protection Officer

At this point, you should be familiar with the legal and historical context of the PWDVA and have an elementary understanding of other relevant criminal and civil laws. Next five chapter will now address each aspect of the PWDVA in detail so as to give you maximum guidance in the day-to-day discharge of your duties. To begin, This Chapter introduces the Protection Officer (PO) and her/his duties under the Act.

Chapter Outline

1. Who is a Protection Officer?
2. Duties of the Protection Officer:

2.1 Duty to Receive Complaints of Domestic Violence

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2.3 Duty to Facilitate an Aggrieved Person's Access to Support Services and to Take Protective Measures 36

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2.5 Duty to Comply with the Orders of the Court 37

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1. Who is a Protection Officer?

The Protection Officer is the key authority appointed under the PWDVA to implement the Act.

Under Section 8 of the PWDVA, the State Government appoints POs. The number of POs to be appointed and their jurisdiction is left to the discretion of the State Government. The State Government should make this decision after considering a number of factors, including the population of the state, the volume of reported cases of gender violence and the number of individuals or agencies that can provide infrastructural or other support to POs in the discharge of their duties.

Although the terms and conditions of a PO's service are to be prescribed by the State Government, Rule 3 of the PWDVR states that the minimum tenure of a PO must be of three years.[1] Further, Rule 3 provides that POs may be recruited from either the government or from members of non-governmental organisations (NGOs).[2] All POs should have at least three years of experience in the social section,[3] a term that encompasses persons either qualified or experienced in social work, law, social sciences, psychology, counselling, etc. Rule 3 also states that preference shall be given to women to be appointed as POs. Finally, Rule 3 obligates the State Government to provide the necessary office assistance to POs for the efficient discharge of their duties.[4]

In Practice

At the time of the publication of this *Manual*, POs had been appointed in all states. A significant number of POs are drawn from the government cadre: Social Welfare Officers, Women and Child Development Officers or Child

1 Rule 3(3)
2 Rule 3(1)
3 Rule 3(2)
4 Rule 3(4)

Development Project Officers. However, in some states, such as NCT Delhi and West Bengal, State Governments have invited applications from, and subsequently appointed, qualified individuals (such as those with qualifications in Social Work or Law) to the post of POs. Most PO appointments are at the district level and many of those drawn from the government cadre already have part-time or full-time employment in another capacity, which means that their PO duties are an additional charge.

2. Duties of the Protection Officer

The duties of Protection Officers are provided in Section 9 of the PWDVA read with Rules 8, 9 and 10 of the PWDVR. These duties can be broadly categorized into two stages:

(i) Pre-litigation duties that are to be performed before the aggrieved person approaches the Court.

Under the PWDVA, a PO is the first *official* person to whom an aggrieved person shall turn for assistance. Upon being approached, the PO's primary objectives are to minimize the aggrieved person's exposure to additional violence and provide for her safety; to facilitate her access to support services such as shelter homes and medical facilities; and to assist with the preparation of the Domestic Incident Report (DIR) and applications to Court. Rules 8 and 9 provide a listing of the PO's duties of at this first stage.

(ii) Duties that are to be performed after an application is filed in Court.

After the aggrieved person files an application under the PWDVA, the Court assumes supervision and directs the PO to perform various functions stipulated in the law. Rule 10 lists the duties of the PO at this second stage, when she/he functions as an officer of the Court.

We shall now briefly examine the specific duties that are attached to each of the two stages delineated above. These duties are discussed in detail in Chapters 5-8 of the *Manual*.

A PO must undertake her/his duties bearing in mind the overall objectives mentioned in Rule 8(2):

(a) To protect the aggrieved person from domestic violence…;

(b) To take all reasonable measures to prevent recurrence of domestic violence against the aggrieved person....

2.1 Duty to Receive Complaints of Domestic Violence

The primary duty of the Protection Officer is to receive complaints of domestic violence and take necessary action based either on her/his assessment of the complaint or on a specific request made by the aggrieved person.

When an aggrieved person approaches the PO with a complaint of domestic violence, the complaint has to be converted into a Domestic Incident Report (DIR),[5] provided as Form I of the PWDVR. The PO assists the aggrieved person in completing the DIR.[6] Once the DIR is completed, the PO ensures that all details are filled in accurately, confirms that the accompanying documentation is complete and, finally, countersigns the DIR.[7]

A PO may not always receive complaints directly from the aggrieved person. Sometimes, the PO may also receive reliable information, verbally or in writing, from a third party who has reason to believe that an act of domestic violence has been, or is being,

5 Section 2(e)

6 As per Rule 8(1)(e), Service Providers and medical facilities under the PWDVA also have the authority to record a DIR.

7 For details on how to complete the DIR, see Chapter : How to Record a Domestic Incident Report.

or is likely to be committed.[8] This could happen in cases where the aggrieved person is unable to approach the PO herself. In such cases, the information received verbally must be written down and signed by the informant. If the informant is not in a position to furnish written information, the PO must record the identity of the informant.[9]

A PO may also receive complaints in cases of emergency either through an email or a telephone call from either the aggrieved person or a third party. In such cases, the PO may seek the assistance of the Police who shall accompany the PO to the place of occurrence to record the DIR.[10]

Once the DIR is recorded, the PO is required to forward copies of the same to the Magistrate, the police officer in charge of the police station and registered Service Providers within local limits or within whose jurisdiction the domestic violence is alleged to have been committed.[11] The PO must also ensure that the aggrieved person is provided with a copy of the DIR free of cost.

2.2 Duty to Inform the Aggrieved Person of Her Legal Rights and Remedies

The Protection Officer must inform the aggrieved person of her legal rights and remedies under the PWDVA and other relevant laws. The duty to provide information and the nature of information to be provided is described in Section 5 of the PWDVA.[12] The PO may use Form IV to supply this information: this Form not only gives information of rights and remedies available to the aggrieved person, but also presents illustrations of different forms of violence to help the aggrieved person identify the kind/s of abuse to which she may have been subjected. If the aggrieved person is unable to understand English, then the PO must ensure that such information is provided in the vernacular or local language.[13]

2.3 Duty to Facilitate the Aggrieved Person's Access to Support Services and to take Protective Measures

You must bear in mind the fact that an aggrieved person may require many different kinds of assistance in addressing domestic violence: legal, medical, psychological, etc. Moreover, access to support services may be crucial in preventing or minimising future incidents of domestic violence and in guarding against victimisation or pressurisation as a consequence of having reported the incidence of domestic violence.[14] The duties of the Protection Officer that arise in this regard are:

(i) To take the aggrieved person to a safe shelter home, if she so requires, and to forward copies of the record of having lodged her in such a home to the Magistrate and the police station in whose jurisdiction the shelter home is situated.[15] A PO may also have to assist in arranging transportation to convey the aggrieved person (and her children, as needed) to the shelter home.[16]

(ii) To have the aggrieved person medically examined if she has sustained bodily injuries and to forward copies of the medical report to the Magistrate and the police station

8 Section 4
9 Rule 4(2)
10 Rule 9
11 Section 9(1)(b)
12 Under Section 5, information to be provided to the aggrieved person includes:
(a) Her right to make an application to obtain relief/s under the PWDVA;
(b) The availability of the services of Service Providers;
(c) Her right to legal aid;
(d) Her right to file a complaint under Section 498A of the Indian Penal Code (IPC).
13 Rule 8(1)(ii)
14 Rule 8(1)(xii)
15 Section 9(1)(f)
16 Rule 8(1)(vii)

in whose jurisdiction the alleged act of domestic violence has occurred.[17] Here too, the PO may have to arrange for transportation to convey the aggrieved person (and her children, as needed) to reach the medical facility.[18]

(iii) To provide information on available support services and registered Service Providers in the area, particularly counselling services, to enable the aggrieved person to access such services on her own.

In order to provide information on support services available, a Protection Officer is duty-bound to take the following steps:

(a) To maintain an up-to-date list of registered Service Providers, notified medical facilities and shelter homes within her/his jurisdiction. Service Providers may be chosen from among those providing legal aid, counselling, medical and shelter services.[19] It is advisable that the PO obtain this list as well as information on available government schemes for women from the appropriate department of the State Government.

(b) To maintain an up-to-date list of counsellors associated with Service Providers or functioning independently.[20]

(c) To liaise between the aggrieved person, police and Service Providers.

Another important method of taking protective action to stop further acts of domestic violence is to prepare a "Safety Plan," as per Form V of the PWDVR.[21] A PO should prepare a Safety Plan in consultation with the aggrieved person after making an assessment of her situation and the kind of support that she may require. Although the PWDVR provides for the Safety Plan to be prepared after an application for relief is filed in court,[22] this is an assessment tool that can be useful even before an application is filed.

2.4 Duty to Facilitate an Aggrieved Person's Access to Court

The Protection Officer is a crucial link between the aggrieved person and the Court. In order to facilitate an aggrieved person's access to court, a PO is required to take the following measures:

(i) To prepare or assist in preparing an application to obtain relief/s under the PWDVA as per Form II of the PWDVR.[23] A copy of the DIR is to be attached to the application. In cases where the aggrieved person requires immediate relief, the PO may also file an affidavit as per Form III of the PWDVR to seek an interim order from the Court.

(ii) In cases where the aggrieved person is unable to afford the services of a lawyer, the PO must ensure that she is provided legal aid under the Legal Services Authorities Act and make available the prescribed form for obtaining such aid free of cost.[24]

2.5 Duty to Comply with the Orders of the Court

As we have mentioned earlier, in addition to providing aid to the aggrieved person, the Protection Officer is also required to assist the Magistrate in discharging his/her functions under the PWDVA.[25] At this stage of her/his duties, the PO is under the control

17 Section 9(1)(g)
18 8(1)(vi)
19 Section 9(1)(e) and Rule 8(1)(xiv). For details on building a multi-agency response system, see Next Chapter, Part 3.
20 Rule 8(1)(viii), (ix) and (x)
21 Safety Plans are discussed in detail in Chapter Duties of the Protection Officer During and Post Litigation, Part 2.
22 Rule 8(1)(iv)
23 Section 9(1)(c) and Rule 8(1)(iii). For further details on how to prepare an application.
24 Section 9(1)(d)
25 Section 9(1)(a)

and supervision of the Magistrate[26]. Hence the PO must receive an order from the Court before undertaking any of the following duties:

(i) Ensure that notices are served on the respondent to appear in court.[27]

(ii) Conduct a home visit of the shared household premises if the Court requires any clarifications prior to granting an ex parte order.[28]

(iii) Make enquiries and file a report on the economic status of the respondent by examining emoluments, assets, bank accounts and other relevant documents.[29]

(iv) Restore an aggrieved person's personal effects to her, such as gifts and jewellery, and restore her in the shared household.[30]

(v) Assist an aggrieved person in regaining custody of her children and secure visitation rights as may be ordered by the Court.[31]

(vi) Assist the Court in the enforcement of orders in the manner directed by the Court.[32] Additionally, Section 9(1)(h) obligates POs to ensure that orders for monetary relief are complied with and executed in accordance with the procedure prescribed under the Code of Criminal Procedure, 1908 (CrPC).

(vii) Confiscate weapons used to commit domestic violence with the assistance of the police.[33]

The general objective of Rule 10 is to ensure that the PO is available to render any assistance that the aggrieved person or the Court may require. Therefore, the PO may be directed to perform other functions by either the State Government or the Magistrate to give effect to the provisions of the PWDVA.[34] In addition to issuing directions provided for in Rule 10, the Magistrate can also issue directions for general practice for better handling of cases under the PWDVA. The PO is duty-bound to carry out these additional directions as well.[35]

3 Guidelines for Protection Officers on General Strategies for Effective Functioning

- Acquire a thorough knowledge of the PWDVA and other relevant criminal and civil laws.
- Acquire knowledge of general procedural laws such as the Indian Penal Code (IPC), Code of Criminal Procedure (CrPC) and the Indian Evidence Act (IEA).
- Acquire knowledge of government schemes and other facilities of which the aggrieved person may avail.
- Create awareness about the PWDVA through the District Administration.
- Promote multi-agency and interdepartmental cooperation to create a Domestic Violence Response System.

26 Section 9(2)
27 Section 13 read with Rule12. For further details on the service of notice, see Chapter Duties of the Protection Officer During and Post Litigation, Part 1.
28 Rule 10(1)(a). For further details on conducting a home visit, see Chapter Duties of the Protection Officer During and Post Litigation, Part 3.1.
29 Rule 10(1)(b)
30 Rule 10(1)(c)
31 Rule 10(1)(d)
32 Rule 10(1)(e). Enforcement of orders is discussed in detail in Chapter Duties of the Protection Officer During and Post Litigation, Part 3.4.
33 Rule 10(1)(f)
34 Rule 10(2)
35 Rule 10(3)

- Explain to the aggrieved person, in a clear, accurate and sensitive manner, the offence of domestic violence and rights and remedies available to her under the PWDVA.
- Acquire the ability to guide the aggrieved person in addressing domestic violence.
- Acquire the skills to conduct enquiries and submit proper investigation reports to Court.
- Prepare the DIR carefully and ensure that supporting documentation is in order.
- Ensure the timely service of notice.
- Ensure the effective enforcement of Court orders.
- Maintain complete and up-to-date records of casework.
- Develop problem-solving and crisis-management skills.

4 Status of the Protection Officer

Section 30 of the PWDVA provides that Protection Officers, while performing their duties under this law, are deemed to be "public servants" within the meaning of Section 21 of the IPC.

Further, Section 35 of the PWDVA provides that no suit, prosecution or any other legal action for damages can be brought against a PO for any act done in good faith under this law.

Although the PWDVA accords broad legal protection to POs in complying with their duties under this law, a PO's unjustified failure or refusal to comply with directions issued by the Magistrate in any protection order granted may attract imprisonment for up to one year and/or a fine of up to Rs. 20,000/-. However, since a PO is a public servant with a fixed remuneration, Section 34 of the PWDVA specifies that prior approval of the State Government (or any officer authorized by it) is required before any prosecution is commenced under Section 33 of the Act.[36]

36 Section 30.

How to Interact with the Aggrieved Person

It is now time to look at the duties of the Protection Officer (PO) that arise before an aggrieved person decides to initiate legal proceedings. This Chapter will focus on the different ways in which a PO can receive complaints of domestic violence and discuss how best a PO should interact with the aggrieved person. A person in a situation of domestic violence has specific needs and vulnerabilities that must be kept in mind as she is offered assistance. This Chapter provides important recommendations on how a PO can respond sensitively and effectively to the aggrieved person. It also describes the Domestic Violence Response System (DVRS): a collaborative, multi-agency approach to aiding the aggrieved person.

Chapter Outline

1 How does the Protection Officer Receive Complaints of Domestic Violence?

1.1 Information Received Directly from the Aggrieved Person

1.2 Information Received from Third Parties

1.3 Action to be taken in Cases of Emergency

2 Interacting with the Aggrieved Person

2.1 Basic Principles of Interacting with the Aggrieved Person

2.2 Creating a Communication Structure

2.3 Understanding Why Women Accept Violence

2.4 Fatigue and Burnout among Protection Officers

3 Building a Domestic Violence Response System

3.1 Role of the Police

3.2 Role of Service Providers

3.3 Role of Shelter Homes

3.4 Role of Medical Facilities

3.5 Role of Legal Services Authorities

3.6 Role of Counsellors

1 How does the Protection Officer Receive Complaints of Domestic Violence?

The PWDVA provides multiple options to an aggrieved person for approaching a Protection Officer and accessing legal remedies and other forms of assistance. Although the PO is envisaged as the primary recipient of information on and complaints of domestic violence, she/he may also receive such information and complaints from other sources, as discussed below.

It is likely that, in cases of domestic violence, the aggrieved person shall first approach the elders of the family to take appropriate action. Failing resolution by family members, it is possible that the aggrievedperson will approach local organisations or individuals working on women's issues or panchayats in rural areas. In case she has sustained serious injuries, the aggrieved person may approach the police to record a complaint or seek aid from medical facilities or shelter homes. There may also be cases where she seeks legal advice from a lawyer or counselling from family counselling centres. All these agencies local NGOs, medical facilities, shelter homes, lawyers and counselling centres, etc. – can/

will then refer the aggrieved person to the PO for further assistance. Finally, in certain cases where an aggrieved person is aware of the availability and role of POs, she may directly approach the PO.

1.1 Information Received Directly from the Aggrieved Person

A PO can receive complaints of domestic violence from an aggrieved person through any of the following methods:

(i) The aggrieved person may directly approach the PO.

(ii) The aggrieved person may approach the PO with a referral from a Service Provider or any other agency working on women’s issues.

(iii) The aggrieved person may approach the PO with a referral from the police.

(iv) The aggrieved person may approach the PO with a referral from a medical facility or shelter home.

(v) The aggrieved person may approach the PO with a referral from a lawyer or counsellor or any other person from whom she has sought assistance.

(vi) The aggrieved person may approach the PO with a referral from Court. As the PWDVA does not bar an aggrieved person from approaching the Court directly, it is possible that she may be referred to a PO after an application is filed in Court. In such cases, the PO may be required to fill in the Domestic Incident Report (DIR) and render assistance to guard against the commission of further acts of violence while the matter is pending in Court.

1.2 Information Received from Third Parties

A PO may also receive information about an incident of domestic violence from any person who has either witnessed or is aware of its occurrence.

Section 4 of the PWDVA authorizes “any person” who has reason to believe that domestic violence is occurring to inform a PO. “Any person” could be a sibling, an out-of-town relative, a child, a concerned neighbour or simply a passer-by who witnessed domestic violence. It is not necessary that the person be certain that domestic violence has been or is being committed; all that is required is that the person’s belief be reasonable.

The objective of this provision is to address situations where the aggrieved person is unable to approach a PO on her own. This may be due to various reasons such as physical incapacity or inability caused by wrongful restraint, lack of awareness of legal rights, apprehensions of escalated violence particularly on children or other dependents, etc. In such cases, Section 4 of the PWDVA allows a third party to give information on the occurrence of violence to the PO for further action. Furthermore, persons acting in good faith in providing such information are given immunity from civil and criminal liability.[1]

The PO may receive such information either orally (if, for instance, the informant is illiterate) or in writing.[2] When the PO receives this information orally, she/he should reduce it to writing. Whether information is originally received orally or in writing, the PO must ensure that it is signed by the informant. For several reasons, including guarding against malicious interference in domestic affairs, the PWDVA does not allow for the recording of information received anonymously. Therefore, the PO must satisfy her/himself about the identity of the informant and keep a record of the identity of the informant, particularly in instances where the informant is not in a position to furnish written information.

1 Section 4(2)
2 Rule 4(1)

Once the information is recorded, the PO must give a copy of the record to the informant free of cost.[3] On the receipt of such information, the PO may also initiate preventive action to stop the further escalation of violence.

Information received under Section 4 is to be distinguished from complaints of domestic violence. The PWDVA recognises that aggrieved persons have the best knowledge of their own circumstances and need to make their own decisions on the nature of assistance they need. Consequently, information provided to a PO does not by itself trigger judicial proceedings or any other action in law. Instead, information received by POs under Section 4 serves as a record of previous violence if the aggrieved person is subjected to domestic violence again. If, in the future, the aggrieved person files an application under the PWDVA in Court, then the Court may rely on information earlier recorded under Section 4. It also allows the PO to be better prepared if the aggrieved person approaches her/him with a complaint of domestic violence at a later stage.

1.3 Action to be taken in Cases of Emergency

An aggrieved person may contact a Protection Office in cases of emergency, such as being dispossessed from the shared household in the middle of the night. Rule 9 of the PWDVR addresses the PO's duties in this situation.

According to Rule 9, a PO may receive reliable information through an email or a telephone call, either from the aggrieved person or a third party that an act of domestic violence has been committed or is likely to be committed. By allowing a PO to receive information through various means, the PWDVR recognise that violence may occur at any time, including in the middle of the night when an aggrieved person is most vulnerable. It also takes into account the fact that an aggrieved person may not be able to leave her house to make a formal complaint and might, therefore, attempt to contact the PO either telephonically or by sending an email. If she does not have access to these services, then a third party, such as a neighbour or a family member, can inform the PO of the violence that is being perpetrated. In such cases, the PO is expected to reach out to the aggrieved person to give her an opportunity to make a complaint.

On receiving such emergency information, the PO must seek immediate assistance from the police. The police will then accompany the PO to the place of occurrence of violence, where the PO will record a DIR and take appropriate action.

The immediate emergency measures that a PO is duty-bound to take include:

(i) If the aggrieved person has been dispossessed and requires shelter, the PO must inform her of available shelter homes, particularly those notified under the PWDVA, and arrange for her transportation to the shelter home.[4]

(ii) If the aggrieved person has sustained serious physical injury, the PO must assist her in obtaining immediate medical attention and arrange for her transportation to the medical facility.[5]

(iii) The PO must inform the aggrieved person of her legal rights and remedies and assist her in recording a criminal complaint immediately, if she so desires. In this instance, the police accompanying the PO to the place of occurrence may be relied upon to restore peace and take measures to prevent further acts of violence.

Rule 9 also provides that the DIR recorded must be presented "without any delay" to the Magistrate for appropriate orders. The use of the term "without any delay" means

3 Rule 4(3)
4 Rule 8 (1)(vii)
5 Rule 8 (1)(vi)

that such DIRs can be forwarded to the Magistrate at any time, even after Court hours. It is, therefore, advisable for the PO to develop an understanding with the Magistrate on how she/he is to contact the Magistrate if an emergency arises at an after-hours time when the Court is not in session.

2 Interacting with the Aggrieved Person[6]

As you will recall, the Introduction to this Manual alluded to the civil society campaign for an Indian law on domestic violence, locating this campaign within the broader context of the Indian women's movement and its work with women facing domestic violence. Within that context, there was broad recognition that women in situations of domestic violence require multiple forms of support (legal, medical, psychological, etc.) and that these must be provided keeping in mind their particular needs and vulnerabilities. This recognition is reflected in the PWDVA's creation of the post of the Protection Officer.

In Practice

> In those states where PO appointments are contractual in nature, the trend has been to recruit to this post persons with qualifications in social work. There appears to be a recognition that their training gives social work professionals excellent skills in forming the crucial link between the aggrieved person seeking assistance and the various agencies that can provide the necessary aid.

Part 5.2 presents important guidelines on how to interact with an aggrieved person. If you are a trained social worker, much of this information will be familiar to you, but we encourage you to review it in order to refresh your skills. If you do not have any social work background, we strongly recommend you carefully read Part 5.2 in its entirety.

The PWDVA is designed around the recognition that the support of a PO can be critical for an aggrieved person. The PO's role is to facilitate the aggrieved person's access to support services of various kinds and to help her navigate the legal system if she chooses to file an application under the Act. Without the PO's support, an aggrieved person might feel unable to tackle her situation: uncertain of how to obtain non-legal assistance and reluctant to pursue legal remedies which, consequently, will reinforce her vulnerability and disempowerment.

As a PO, you must be aware of your own thoughts and feelings (including prejudices) about family violence, if you are to assist women effectively, sensitively and respectfully. POs who are unclear about their own opinions on family violence may deny its existence, blame the women in crisis and minimise the effects of the violence. Reading this Manual should help you to identify your biases, clarify your misconceptions and distinguish between myth and fact in order better to understand the phenomenon of domestic violence and the needs of the aggrieved person whom you are duty-bound to assist.

2.1 Basic Principles of Interacting with the Aggrieved Person

First and foremost, as a PO, you need to establish a supportive and encouraging relationship with the aggrieved person. Women in violent relationships usually have very low self-esteem. In order to establish a sympathetic and empowering relationship, you will find it helpful to remember the following principles of social casework[7]:

6 LCWRI is deeply indebted to the pioneering and definitive work done in this field by the Tata Institute of Social Sciences, on whose protocols and publications we rely in Part 5.2. Please note: Part 5.2 is not intended as a summary of social work principles; rather, it is our compilation of those aspects of social work principles and TISS protocols that we regard as particularly relevant to the PWDVA. LCWRI is solely responsible for any errors or misinterpretations regarding these principles and protocols.

7 Although the majority of examples provided in the Manual are about married women, please remember that domestic violence under the PWDVA is not limited to matrimonial situations.

- *Every person must be considered to have dignity and worth.*

Always accept that people have a potential to grow and achieve their dreams. Moreover, since human beings cannot survive in isolation, when a person is unable to realise her potential for a healthy and fulfilling life, it becomes the role of the society she lives in to help her out.

For Example

A is facing mental and physical violence from her father and, as a result, is unable to attend college. It is the duty of the agencies that are meant to protect her rights and the society at large to help her emerge from the situation of violence and be able to educate herself and thereby achieve her goals.

- *Accept each aggrieved person who approaches you as a unique individual.*

No matter how many women approach you every day, each one of them is unique: each one experiences violence in a particular way and has needs that are specific to her. Never generalise or stereotype the problems of the women who come to you for assistance.

For Example

B and C, who are sisters, are both facing domestic violence from their marital families. Both B and C are being denied food. However, B is pregnant. As a PO, you will need to tailor the assistance you provide to each sister to her respective circumstances and different needs.

- *Do not judge the aggrieved person. Do accept her with all her strengths and weaknesses.*

As a PO, your job is to help the aggrieved person. You are not meant to judge or punish her character or her actions. Just like you, the aggrieved person is a human being with both good and bad qualities. The particular circumstances of her situation will have led her to make certain decisions and take certain actions. Although these circumstances and reasons may not be immediately clear to you, you must acknowledge that they exist and are compelling for the woman herself. It is not your role to find fault with her or to put conditions on assisting her. Rather, it is your role to build an attitude of active concern for the aggrieved person.

As a PO, you must respect the decisions the woman may make, even when those decisions are contrary to what you believe would be the best option. You must bear in mind that each woman experiences domestic violence primarily because she is a woman: that our culture effectively supports the right to control women and that the barriers to her freedom are many. She may not be able to free herself at this time; be delighted and amazed when she does.

For Example

D is facing emotional and physical violence from her husband and decides to leave the home without her child. Although you may disagree with her decision to leave her child behind, it is your duty to help her get adequate protection from violence, irrespective of how you feel about her decision. If she is leaving the child in a situation where he/she may face violence, you may find an acceptable way to express your disagreement; but, even in that case, you must understand that, in the woman's situation, the instinct for self- preservation is stronger than all other feelings.

- *Remember that whatever the aggrieved person may choose to do with her life is her own decision. Always accept that she must participate in solving her own problems.*

It is her life. She is the only one who has the right to decide how to live it. You must inform her of the choices available to her and you may offer guidance in making these choices, but you cannot make her decisions for her. Rather, you must motivate her to make these decisions herself.

Because many women in our culture have been brought up to think that they cannot (or must not) make any decisions on their own, you might find that the aggrieved person asks you to decide for her. Do not do so. Keep in mind that giving advice is not the same as telling a person what to do and that the woman's self-determination is critical. After explaining all her options, ask her: "what would you like to do?" Be patient and supportive while she struggles with her choices. Even if it takes her a long time to decide, she is the only person who is entitled to make that decision.

Assessing how supportive or how empowering you need to be depends on the aggrieved person's physical and emotional state. As a general principle, POs need to work from the premise that, wherever possible, it is best to encourage the woman to make decisions for herself and take actions for herself. There are some situations, however, where she will be incapable (physically or emotionally) of such tasks and will need you to be more supportive than usual.

There is a significant fallout if you automatically make another person's decisions for her: if the consequences of your decision are unpleasant or unsafe, the person you are trying to help could hold you responsible.

For Example

E is facing domestic violence and, with your assistance, chooses to go to Court. She is granted a protection order and decides to live separately from her husband. However, a few months later, she chooses to go back to him. You may feel that after the kind of violence she has undergone, it is not wise for her to return to her husband. Nevertheless, you must let E make her own choices and support her. And even if she returns to you with a new complaint of domestic violence, it is your duty to assist her without bias.

Consider another situation where F has suffered physical violence and is faced with the choice of leaving the shared household or trying to adjust to the violence. When she asks for your advice, you recommend that she remain in that household. However, the violence continues and, one day, she is beaten so badly that she needs hospitalisation. Your decision will now be on your conscience.

- *Remain mindful of the fact that your role as PO makes you vulnerable to becoming overinvolved in the life of the aggrieved person.*

Remember that your relationship with the client is not personal; it is professional and, therefore, you must control your emotional involvement. Although the aggrieved person or the perpetrator of the violence may remind you of someone in your own life, that is all it is: an unexpected resemblance. Your role is to provide professional help and you must not allow personal considerations (such as resemblance to family or friends) to cloud your judgement.

For Example

G is facing domestic violence from her brother and her brother reminds you of your own younger brother. You feel that G is complaining too much about only emotional violence and that G's brother is actually a 'nice person'. So you tell G that she is being unreasonable and advise her to return to her brother's house. Her brother beats her up again. Now, when she comes back to you, how will you justify the stand you took in advising her go home?

- *Remember that information given to you by the aggrieved person must be treated with confidentiality.*

Maintaining confidentiality is essential for you to create a relationship of trust with the aggrieved person and is also of utmost importance because the inappropriate disclosure of information may endanger or victimize the woman further, thus defeating the purpose of the PWDVA. Furthermore, the PO's status not only as a public servant, but also as an officer of the Court, bars her/him from discussing the case with any person, except with other authorities and agencies recognised under the PWDVA, and that too with the express purpose of assisting the aggrieved person. Although the DIR is a public document and you might need to discuss aspects of the case, you must never have such discussions without first obtaining permission to do so from the aggrieved person, unless it is a case of emergency. All other authorities and agencies, too, are required to maintain the confidentiality of your discussions.

The fact that the DIR is a public record does not mean that all persons can have access to it. The only instance where a DIR can be shared or given to another person other than the authorities or agencies recognised by the Act, is if it used as the basis to grant an order or to take any action that adversely affects the rights of such a party.

2.2 Creating a Communication Structure

With the above principles in mind, we will now discuss how to create a communication structure that encourages the aggrieved person to trust you and be forthcoming with all the details of her situation. Listening and talking to the aggrieved person is also an essential skill which you will have to inculcate in order to record the DIR accurately and take appropriate precautionary measures.

While talking to a woman who has experienced domestic violence, the essential principles of the interaction should include the following:

- Your interaction is with an adult and can only be undertaken with her voluntary and informed consent.
- The aggrieved person has the right to the least intrusive intervention. A person will accept help when she is ready. The choice not to accept help must be respected.
- Women who have experienced severe violence over a long period of time may often have a distrust of the systems that are meant to protect them. As a PO, you are a part of that system and, therefore, the aggrieved woman may not trust you or your ability to assist her. Do not take this personally. Instead, make an extra effort to reach out to her: to show that you are available and can be depended upon to help her.
- Talking about the violence that an aggrieved person has experienced is complicated by fear, ignorance and embarrassment. The woman may be vulnerable and indecisive and show low self-esteem. Most women are very vulnerable at the time of disclosure or can be in a state of emotional shock that may last several days. During this time,

many women are overly compliant to suggestions and may later blame the PO for giving advice. The PO should listen, allow time for the woman to vent her feelings, offer emotional support and avoid telling the woman what to do. Remember: giving advice does not mean telling the woman what to do. She must decide her own course of action, with your steady and patient support.

- Women who have experienced violence may often feel ashamed of the abuse, terrified of the abuse and blame themselves for the perpetrator's actions. Before a woman can participate in the process of solving her problems (with your assistance), she needs to realise that she is not at fault for the violence she has suffered. In order for her to realise this, you will have to help remove any feelings of guilt she might harbour, by recognising that violence against the woman is the fault of the perpetrator alone. If a person is unable to control their own emotions and resolve issues in an adult and non-violent manner, then the problem is with that person and not the victim of their violence. In our society, where women are routinely made to feel inferior and told that they 'deserve' the violence that they 'provoke', it is especially important to make sure that the aggrieved person understands that violence is not her fault, that she has options and that she is not alone. You must make it clear to her that she has the right to live a life free of violence.

  As a PO, you will need to offer the aggrieved person a great deal of moral support so that she can develop the confidence to resolve her situation. One way to provide affirmation is in the form of statements like: "You don't deserve this, you deserve much better"; "There is no excuse for domestic violence"; "You are not alone"; "I will support your choices".

- Domestic violence can overwhelm the aggrieved person's ability to think clearly. As a PO, it is your role to help the woman look at her situation realistically such that she realises there are concrete steps she can take to improve her situation. Rather than allowing her to feel daunted or defeated by her situation, help her to problem-solve with hope and confidence.

- Your interaction should be aimed at creating the maximum options for the aggrieved person, in the context of her specific situation. You need to provide the woman with information about different legal, medical and administrative systems and the rules and procedures of these systems. You need to help her identify and explore all possible options and possible consequences and assist her in developing strategies and a plan of action. You must refer her to resources you know are reliable and with which you are familiar. Information provided about referrals can be as specific as the best time to call, who to talk to and what information she will need to provide. You have to discuss a plan of action, assist in the preparation of all necessary documents or requests for assistance, and help rethink plans if they fail or if circumstances change.

These broad guidelines influence how you should frame your questions, about which more specific suggestions follow below:

- Always ask straightforward, open-ended questions in a non-threatening and non-judgmental manner. This will help decrease the stigma associated with abuse.

- Women may avoid discussions because questions are painful, embarrassing or provoke anxiety. Structure your conversation to systematically and gradually get more data, thus allowing the aggrieved person to tell her own story. Take notice of

vague or evasive answers. Ask for clarification of vague answers and pursue areas in which the woman is evasive.

- Do not ask:

  X 'Yes' or 'No' questions (unless you want a simple 'Yes' or 'No' answer).

  For example: "Did you have to face any violence?"

  X Complicated questions

  For example: "What do you think are the behavioural implications of violence on women?"

  X Vague questions.

  For example: "What do people generally believe to be the effect of violence?"

  X Several questions at once.

  For example: "What were the results of your interview, did you get the job and have you applied anywhere else?"

  X Probing, threatening or culturally insensitive questions.

  For example: "Do you think that your religion teaches you to be more violent?"

  X Judgemental questions.

  For example: "Aren't you ashamed of leaving your children behind?"

  X Questions that imply an answer or a point of view.

  For example: "If you want to move on with your life, wouldn't it be helpful if you moved out of the house?"

- Do ask:

  ✓ Questions that make the woman feel at ease and not threatened.

  For example: "How do you feel now?"

  ✓ Questions that encourage the aggrieved person to continue talking.

  For example: "You said that you find it difficult to talk about all the problems you faced in your home. Can you tell me the specific difficulties you faced with your father?"

  ✓ Questions that elicit more facts, opinions or feelings.

  For example: "How do you feel when your mother says that your marriage is fine and you need to go back to your matrimonial home?"

  ✓ Questions that help the person answer honestly.

  For example: "What particular kind of emotional violence do you find the most difficult to deal with?"

  ✓ Questions that support the person while encouraging objectivity.

  For example: "I can certainly understand that living with such a difficult person makes it hard for you to retain your peace of mind. In what way do you think you could reassure your brother and yet retain your rights?"

  ✓ Questions that are specific and focus on the real situation.

  For example: "What happened when you said that?"

  ✓ Questions that help the person see that you do not have all the answers.

For example: "Let's try to think of other ways by which to solve this problem?"

2.3 Understanding Why Women Accept Violence

As a PO, you may sometimes feel frustrated, helpless or even angry if the aggrieved women who approach you appear not to be taking concrete steps to remove themselves from situations of violence. People who work with women on issues of domestic violence frequently ask themselves the following:

- "Why do women accept violence? Why don't they protest? Why don't they walk out of abusive relationships? Why don't they take action against those who perpetrate the violence?"
- "The woman came to me, I gave her all the help I could think of and, then, two weeks later, she told me she still does not want to go to Court. All my effort was wasted: what was the use of her coming to me if she wanted to go back and reconcile?"
- "Why doesn't she understand that it is stupid to go back to a man who beats her?"
- "What is the point of her settling the matter out of Court, when he could easily turn against everything that was agreed upon and she won't be able to do anything?"
- "How can I help her if she is not even willing to speak up against her own husband?"

It is not within the scope of this Manual to discuss at length the socio-psychological dynamics of domestic violence, although the topic has been, and continues to be, the subject of rigorous scholarly research and activism. Instead, in part 5.2.3, we attempt to address some of the most common justifications for violence that you are likely to encounter. We place these justifications within our local socio-cultural context in order to enable you to understand why some of the women you meet in the course of your work make the choices and decisions that they do. Remember: instead of summarily dismissing a woman's reasons as wrong, you must respect the fact that the reality of her specific situation compels her to behave in certain ways.

At the simplest level of explanation, women in our society are regarded as inferior and are socialised, from the time they are children, into believing that violence perpetrated on them is natural and acceptable: i.e., that they are the appropriate objects of the perpetrator's anger (an anger which is allowed to be uncontrolled in stark contrast to women's behaviour which is strictly circumscribed). One reason why the PWDVA elicits strong reactions is that it has brought the issue of domestic violence out from the 'private' sphere of the home into the 'public' domain of law and policy and, in so doing, asserted that domestic violence is not a cultural prerogative or a problem between two people, but rather it is the product of patriarchal social structures that determine the behaviour of women and men.

(This notion of family privacy is also why you might find that your attempts to elicit more information regarding these matters bring out strong reactions from the women who come to you. They may even suspect your intentions for wanting to know more or do more than they feel is necessary.)

It is not just that violence against women is considered acceptable in our society, but also that the very definitions of what constitutes violence in the first place vary widely, with many people – both women and men – failing to recognise certain actions as violent at all or dismissing them as 'minor' in relation to 'more' serious, more 'real' forms of violence. So, in most places you will find that a certain level and some forms of violence are designated as 'normal' and acceptable within domestic relationships. Many

women will tell you that some incidents of violence were just 'an occasional outburst' or that a show of temper that resulted in 'just one slap' need not be counted in the history of violence. Many will even tell you that they have come to you for one critical incident and that the rest of the incidents are routine (*"yeh sab to chalta hi rehta hae"*). You must also guard against such prejudice in yourself: you might find yourself trivialising certain forms of domestic violence by saying: "Husbands and wives do fight, this is normal" (*"pati patni mein tu-tu mae-mae to hota hi hae"*) or "it takes two hands to clap" (*"do bartan ho to awaz to hogi"*).

As mentioned above, both men and women will provide several culturally sanctioned explanations for the perpetrator's anger:

- One of the most common explanations for violence is alcohol/drunkenness.

Women will often tell you: "When we got married, he was a very nice man, he earned a lot and never once hit me. But now he has fallen into bad company and started drinking. Now he comes home drunk and curses and beats us. He spends all the money on alcohol." Or they might make excuses for his drinking: "He gets so tired that he needs something to help him relax, so he drinks a little. But the drink overpowers him; it isn't his fault."

Alcohol is seen to transform an otherwise nice person into a violent one: it absolves the perpetrator of responsibility because he is seen to have no control over himself when under the influence. But ask yourself this: if, indeed, the man cannot help himself when he is drunk, then why does he not go outside and attack other men or people bigger than himself? Why does he only unleash his violence on women and inside his home?

- Another commonly given excuse for violence is the woman's inability to bear children or – rather more often – to produce a male child.

When's a woman's sole purpose is understood to be bearing children, then her 'failure' to do so – especially her 'failure' to produce a male heir – is seen as worthy of violent punishment. A woman will tell you: "I am being hit for a reason: I haven't been able to give my husband a son." Or: "I know I'm not well, but I had two girls one after the other, so we have to keep trying to have more children. That is why he uses a little force sometimes." Or she might say: "I couldn't have a child, so they used to hit me then, but now that I have a boy, I don't see why they should hit me anymore." She might even justify her husband's bigamous relationship: "I couldn't give him a son, so I told him that he could marry again, but now that I have a son, I want him to come back to me."

As you know, women can be severely beaten, thrown out of the matrimonial home or sent back to the natal home for this reason. The biology of pregnancy and gender determination is rarely understood; instead, the ready explanation you will hear is that the woman is "barren".

Women are frequently forced to have numerous children, even in the face of their deteriorating health, in the hopes of a male child. Most women will not consider this a form of sexual violence.

- One of the rarely spoken about but frequently occurring manifestations of domestic violence is sexual violence, often in the form of forced sex.

When women's bodies are considered the property of men, then sexual violence by their male relatives is justified as the rightful exercise of male authority. Women might refer to this violence obliquely: "sote mein mara" (literally: "He hit me as I slept"). One of the primary reasons for condoning this kind of violent behaviour is the belief that men have stronger sexual urges than women. So you might have women say to you: "He knows

I am very young and I am scared, but how can I refuse my own husband?" Or: "How can it be rape if he is married to me?" Or: "If he wants it, he can do whatever he wants, even if he hits me; you see men are very different from women."

It is possible that you may find it difficult to ask about, deal with or even accept this form of violence. However, the fact is that sexual violence is a very widespread problem in India and comes in many different forms. You will have to overcome your own reluctance and shyness, learn how to ask women if they have suffered this form of violence and be able to clarify their doubts regarding what constitutes sexual violence.

- Another common excuse for violence is the 'misbehaviour' of a 'disobedient' (or 'immoral') woman.

Our patriarchal moral code divides women into two categories: 'good' women and 'bad' women. Men (fathers/fathers-in-law/husbands/brothers/sons) are seen as the protectors/disciplinarians of 'good women' who must perform the role of obedient daughters/daughters-in-law/wives/sisters/mothers. Any deviation from the behaviour that is prescribed by men for 'good women' is seen as reason for men to exercise control and punish 'bad women'. Women themselves internalise these values to such an extent that they never question who defines these values, on what basis and why? Women are told and tell each other that it is not permissible for them to use violence even to protect themselves; any sign of female protest marks her as a 'bad woman'. In fact, most women see it as their duty to bear violence in silence so as to preserve family 'honour'.

As a result, you will find women might condone male violence by blaming the woman's character or wifely attributes. You might hear statements like: "She doesn't look after the house properly, so she deserves to be hit. She knows he likes hot food when he comes home from work, so why doesn't she keep it ready?" Or: "She spoke insultingly to her in-laws and needed to be taught a lesson." Or: "She is so stubborn ("bahut ziddi hai"); how can they not hit her?"

- Property disputes often become the reason for escalating violence.

You will hear women say: "My brothers threw me out of the house after my father died because they thought I'd ask for a share". Or: "My sons beat me up after my husband died because they wanted his house." Or: "There was reason why my husband's family used to curse me after I got married; they thought I would alienate him from his family and make him ask for a share in the property."

- In yet another instance of cultural condoning, the perpetrator is presented as the helpless innocent caught between antagonistic women and spurred on to violence for which he cannot, therefore, be held responsible.

In this context, you might hear the aggrieved person say: "My father didn't want to raise his hand, but my mother told him he must discipline me." Or: "My husband is actually a very nice man, but my mother-in-law keeps telling him to put me in my place" ("usko uksati rehti hae").

2.4 Fatigue and Burnout among Protection Officers

People who work on the issue of domestic violence do find the job stressful and exhausting and may experience fatigue and burnout. As a PO, you might experience the same feelings as the women with whom you work, such as isolation, anger, sadness and horror. Some of you might experience difficulty sleeping, eating and concentrating. You may feel vulnerable, overwhelmed and powerless when faced with the challenging task of helping women who are experiencing domestic violence.

Whenever you are in such a dilemma, you must remember that you are not alone and can ask for help from your colleagues. You and your colleagues must:

- Develop an atmosphere of trust and support among yourselves. You must listen to the needs expressed by others and develop a comfort level and provide a safe forum for them to share their feelings, concerns, attitudes and beliefs.
- Ask for and attend as many training sessions as possible to help you build your confidence in dealing with the practical, emotional and behavioural challenges of working with domestic violence.
- Collaborate with each other and other PWDVA stakeholders to develop policies and procedures for responding to domestic violence and for dealing with legal and other emergencies. (For more on this, see Part 5.3 below.)

As your knowledge about domestic violence increases, you will be able to come to terms with the intensity of feelings it generates. A clearer understanding of the complexity of the situation will slowly emerge, as well as an increased respect for those living in violent situations.

3 Building a Domestic Violence Response System

As mentioned earlier, the PWDVA recognises that women who face domestic violence require multiple forms of support. Moreover, in order to have an efficient system of administration of justice in domestic violence cases, all the stakeholders of the Act (Protection Officers, Service Providers, police, judiciary, medical facilities, etc.) must work in coordination with each other. Consequently, Part 5.3 describes the recommended Domestic Violence Response System (DVRS), a collaborative, multi-agency initiative designed to provide women efficient access to comprehensive options to counter domestic violence. In order to describe this DVRS, Part 5.3 focuses on the individual roles of its component agencies.

Section 11(c) can be interpreted to vest the responsibility of creating the DVRS on the Central and State Governments. The following Sections and Rules delineate the PO's duties and role regarding the DVRS:

- Rule 8 (1)(xiii): Liaise between the aggrieved person, police and service providers.
- Rule 8 (1)(viii): Inform all Service Providers that their services may be required.
- Rule 8 (1)(ix) & (x): Scrutinise applications for appointment of counsellors; prepare and keep updated a list of counsellors
- Rule 8 (1)(xiv) and Rule 11(4): Maintain a proper record of Service Providers, medical facilities and shelter homes.
- Section 9(d) and Rule 8 (1)(v): Facilitate access to legal aid.
- Section 9(e): Maintain a list of all Service Providers providing legal aid.
- Section 9(f): Make available a safe shelter home.
- Section 9(g): Have the aggrieved person medically examined.

The PO must be aware of the following issues regarding the DVRS:

(i) The PWDVA envisages the PO as the focal point who will coordinate the DVRS.

(ii) In order to comply with her/his legal duties, the PO must urge the government to formulate protocols for inter-departmental coordination.

(iii) Ultimately, the DVRS also helps the PO better fulfil her/his duties by allowing her/

him to rely on the assistance of DVRS partners who have wide experience of working with women facing domestic violence.

As with DVRS initiatives across the world, local Indian DVRS models should aim to rectify the institutions and practices that prevent women from receiving the full protection of laws and social services. While DVRS partners may vary somewhat according to the scope of a PO's caseload, key partners for effective case resolution should include: police, Service Providers, judges and judicial officers, court staff, prosecutors, legal aid advocates from both community-based agencies and the District Legal Service Authorities, shelter providers, medical facilities, other intervention programmes such as mental health and substance abuse programmes, community development programmes, other appropriate local government agencies, children's services, advocates for children and school system representatives. It should be noted that Magistrates may need to be consulted during the process of planning the local DVRS. Their perspective is important in ensuring the due process of law, protecting defendants' rights and enabling the Court's effective handling of cases of domestic violence.

The media is also an essential part of efforts to promote awareness about domestic violence and to inform the public about resources available for victims. As is well known, the media plays a pivotal role in both influencing and changing social norms and behaviour. In the area of domestic violence, media campaigns can help to reverse social attitudes that tolerate violence against women by questioning patterns of violent behaviour accepted by families and societies. A PO's collaboration with the media needs to focus on creating new messages and new responses to reduce domestic violence.

When assisting the government to develop the DVRS, a PO should first determine whether there is an existing domestic violence coalition that may encompass some of the necessary agencies. Wherever possible, such existing efforts should be built upon. If this is not feasible, the aim should be to start with representatives from essential agencies and build outward as the collaboration develops. Since this work in itself can be quite intensive and detailed, it may require the creation a smaller working group willing and able to focus on the task of creating the DVRS.

In order for the DVRS to function smoothly, its partnerships and protocols must not rely on particular individuals, but should be institutionalised into formal procedures, memoranda of understanding and job descriptions. In addition, the DVRS should be designed to be flexible and evolve with changing circumstances and needs. Once the system has been set up, it is useful to conduct a periodic review of its strengths and weaknesses so as to regularly fine-tune its functioning.

The DVRS works by integrating into a well-organised and accessible structure information and services that are usually spread out across various agencies. When these resources are not integrated, stakeholders might overlook crucial factors that influence a case, the aggrieved person might find it a challenge to access the full range of legal options and non-legal services available to her and, finally, scarce resources and overburdened systems are not managed efficiently to maximise their potential.

For Example

A Court deciding on a custody matter needs to know of the parties' prior records, including criminal, family and civil court actions. Such information is a part of the goal of strengthening the system in keeping victims and their children safe and holding offenders accountable. A DVRS that facilitates the coordinated sharing of information would be helpful in this case because:

(i) Knowing prior background – a history of restraining orders, for example – provides everybody with the most information possible to make informed decisions.

(ii) All stakeholders involved can follow-up on the progress of a case: POs can find out about the status of orders and relief/s granted; Service Providers can estimate the length of the term of provision of service; all concerned authorities can promptly learn of violations, so that they may respond quickly and reduce the risk of harm to the victim or her children.

(iii) The aggrieved person is also able to keep authorities aware of relevant developing information on the case.

However, accessibility to and sharing of information must be balanced with the imperatives of confidentiality and safety. Not all information should be available to every DVRS partner and a protocol must be established to deal with differing standards of proof and evidentiary issues that may exist.

Finally, consistent with the overall purpose of the PWDVA, all DVRS partners must be educated on the dynamics of domestic violence and the characteristics of effective interventions. These partners must also be educated about each other's roles and responsibilities, in order to work together effectively.

3.1 Role of the Police

Although the PWDVA introduces the institutions of the Protection Officers and Service Providers, as per Section 36 of the Act, these are intended to supplement, rather than supplant, existing mechanisms. The police, in particular, continue to play a pivotal role in exercising their powers and fulfilling duties under the existing criminal law regime.

As per the Act, the police are required to render the following forms of assistance:

(i) When approached by an aggrieved person, Section 5 mandates the police to inform her about her rights under the Act, including the right to make application/s for legal relief/s; and about the availability of POs, SPs and free legal aid. The police is also required to inform the aggrieved person of her right to record a DIR and refer her to the PO.

(ii) If an aggrieved person approaches the police with a complaint of domestic violence and the facts disclose the commission of a cognisable offence under the IPC, Section 5 of the PWDVA requires that the police officer register an FIR or an NCR and undertake an investigation in accordance with the procedure prescribed in law. This mandatory duty of the police is also provided for in Section 154, CrPC and leaves the police officer with no discretion in the matter.

In fact, Section 5 of the PWDVA provides that an aggrieved person shall have the right to file a complaint under Section 498A, IPC (cruelty by husband or relatives of the husband) simultaneously with any complaint filed under the PWDVA.[8] Other cognizable offences that might be implicated in cases of domestic violence and for which the police must take action, include grievous hurt (Section 322, IPC), wrongful confinement (Section 340, IPC), assault or criminal force to wrongfully confine a

8 Because offences under Section 498A, IPC are cognisable, an FIR should be registered by the police in all cases where a woman complains of facing cruelty within her marriage. However, if the ordinary protocol or procedure followed by the police does not allow for immediate registration of an FIR, the aggrieved person must be given an option of pursuing either civil or criminal proceedings. In case, she opts to pursue civil proceedings, she must then be referred to the PO for recording a DIR under the PWDVA.

person (Section 357, IPC), assault or criminal force to women with intent to outrage her modesty (Section 354, IPC), rape (Section 375, IPC) and dowry death (Section 304B, IPC). Remember: aggrieved persons are not limited to choosing to proceed either under the PWDVA or under the IPC; rather, they may proceed under both simultaneously.

(iii) The police should refer the aggrieved woman to a PO or SP for recording DIR if the aggrieved woman so desires. However, if she does not want to initiate any legal proceedings, she should be advised to record a DIR in any case as it creates a record of domestic violence and does not automatically lead to any legal proceedings.

(iv) Specific instructions to the police pertaining to the preparation of DIRs are contained in Clause 8 of Form I according to which the police officer must:

(a) Inform the aggrieved person that she can also initiate criminal proceedings by lodging a FIR when the facts disclose the commission of an offence.

(b) Make a daily diary entry with the remark that the aggrieved person wishes to pursue civil remedies if the woman does not want to initiate criminal proceedings and record that the matter has been kept pending for appropriate enquiry before registration of a FIR.

(c) Offer immediate medical assistance if the aggrieved person reports any physical injury and thereafter arrange for the woman to be medically examined.

(v) The police must assist and accompany the PO in emergency situations.[9]

(vi) The police must assist the PO in the enforcement of orders passed by the Court.[10]

(vii) If an order for monetary relief has been issued, the Magistrate must send a copy to the local police station. This keeps the police in the informational loop and permits police supervisors to schedule staff to assist the aggrieved person and POs in enforcing the order.[11]

(viii) If a Court's civil order is violated, the police must follow the ordinary criminal law procedure in conducting the arrest and producing the arrestee before the Magistrate.

The police are one of the most important agencies of the criminal justice system. They are the certainly most visible part of the system: the only agency that operates twenty four hours a day, seven days a week, covering every locality, free of charge. They are often the first (institutional) port of call for victims of violence.

However, it has been observed that unless the situation is life-threatening, women and their family members prefer to resolve issues within the family or the community. Their first, and sometimes only, concern is that the violence should stop or, at least, stay within bearable limits. That is why they are often reluctant to take part in any process requiring the authorities, whether they are the police or the courts or, even, POs. There is also a fear of the police due to known cases of malpractice and brutality. Many women and their families do not trust the police to conduct investigations honestly or behave impartially.

Finally, there is the notion that going to the police will bring disrepute to the family. For example, women might say: "Please don't tell us to go to the police station. It'll bring disgrace to the family" or "If I have to live with the man, how can I drag him and his family

9 Rule 9
10 Sections 19(5) and (7)
11 Section 20(4)

to the police station?" or "Nobody in my community will speak to me if I approach the police".

To complicate matters, the police system is rife with prejudices of its own when it comes to the issue of domestic violence. These stereotypical attitudes about women and their place in family/community/society (which were discussed in Part 5.2 above) affect how police officers respond to cases of domestic violence. POs will often hear the following comments from the police: "The PWDVA does not mention any specific role for us"; "Domestic violence is a private, family matter and caused by women who cannot adjust to the proper norms governing their behaviour"; "We cannot act on non-cognisable matters and, besides, we have real police work to attend to"; "Domestic violence cases are a waste of time because women change their minds or don't follow our advice or misuse the law"; "Families shouldn't break, so we should counsel the parties to settle the matter quietly: we can scold the men and warn the women of the consequences of filing complaints".

As a PO, you will often be in the difficult position of dealing with the misconceptions of both aggrieved persons and their families on the one hand, and the police and other DVRS partners on the other.[12] It is your responsibility to clarify these misconceptions and educate all parties concerned in order to realise the Act's goal of providing women a life free of domestic violence. The quality of the DVRS collaborations you establish will play an important role in this regard.

There has been some confusion regarding the role of the police, especially in those jurisdictions in which POs have not yet been appointed or where the number of existing POs is not sufficient. Many remote and rural areas continue to have the police as the principal, or even only, resource for domestic violence victims seeking recourse to the law. In general, Courts should not hesitate to empower the police to assist with the orderly administration of the PWDVA whenever doing so is helpful, provided that doing so does not unnecessarily overburden the police.

3.2 Role of Service Providers

As per Section 10(2) of the PWDVA, Service Providers registered under the Act shall have the power to:

(a) Record the Domestic Incident Report in the prescribed form if the aggrieved person so desires and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence took place;

(b) Get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;

(c) Ensure that the aggrieved person is provided shelter in a shelter home, if she so requires, and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.

As per Section 10(1) of the PWDVA, to be recognized as Service Providers (SPs) under the Act, voluntary associations must follow a two-step registration procedure:

12 For instance, the medical profession is also frequently biased against recognising the physical and psychological effects of domestic violence as a legitimate health issue. Unfortunately, the judiciary is not exempt from this bias either. In fact, it is precisely this institutionalised bias that prompted the creation of the PWDVA in the first place and that explains the opposition the Act encounters in its implementation on the ground.

(i) The voluntary association must already be registered under the Societies Registration Act, 1860 or the Companies Act, 1956 or "any other law". "Any other law" includes Trusts under the state Public Trusts Acts.

(ii) The voluntary association must register as a Service Provider under the PWDVA with the state government.

The PWDVR elaborate upon registration procedures for SPs. Any registered voluntary organization eligible under Section 10(1) of the Act that wishes to render aid as an SP shall make an application under Section 10(1).[13] The candidate organization should complete Form VI and submit it to the State Government. After making inquires and satisfying itself that the applicant is suitable, the State Government will register the organization as an SP under the PWDVA and issue an appropriate certificate of such registration.[14] An application cannot be rejected without giving the applicant an opportunity to be heard.

Rule 11(3) specifies the eligibility criteria for registration of Service Providers. The eligibility criteria are based on the kinds of services being rendered by the applicant. Form VI provides further details on the nature of services that must be provided by applicants. The candidate organisation should have been rendering the kind of services it is offering as an SP under the PWDVA for at least three years before the date of application for PWDVA SP registration. Broadly, the kinds of services envisaged under the law are as follows:

- Running a medical facility,[15] psychiatric counselling centre or vocational training institution.

  The State Government shall ensure that the candidate fulfils the requirements for running such a facility or institution laid down by the respective regulatory authorities regulating the respective professions or institutions.

- Running a shelter home, in which case the government is required to inspect whether it has the following:[16]
  - Whether there is adequate space in the shelter home
  - Measured area of the entire premises
  - Number of rooms
  - Area of rooms
  - Details of security arrangements available
  - Whether a record is available for the maintenance of a functional telephone connection for the use of inmates for the last three years
  - Distance of the nearest dispensary/clinic/medical facility
  - Medical professionals available, either on site or on call
  - Whether any arrangement is in place for regular visits by a medical professional
  - Other facilities available to be specified

- In case of a counselling centre, the registering authority must inspect the facility and record details pertaining to the number of counsellors, their qualification and experience and the type of counselling provided. The report should also address

13 Rule 11(1)

14 Rule 11(2)

15 Please note that a registered Service Provider running a medical facility should not be confused with a medical facility notified under the Act. The role of the notified medical facility is explained under Section 7 of the PWDVA read with Rule 17 of the PWDVR.

16 Similarly, note that a registered Service Provider running a shelter home is not to be confused with a shelter home notified under the Act. The role of notified shelter homes has been detailed under Section 6 of the PWDVA read with Rule 16.

the type of facilities provided, such as professional counselling sessions, safe environment to discuss problems and express emotions, information on counselling services, support groups and mental health care resources, etc.

Although organisations that have not registered as SPs under the PWDVA can continue to provide services to women facing domestic violence, registered SPs are exempt from liability for action taken in good faith under the Act.

How is the Court Assisted by Service Providers? What Directions can the Court Give to Service Providers?

- Service Providers are empowered to record the DIR and forward it to the Magistrate in connection with applications under Section 12 of the Act.
- Service Providers can be counsellors.
- Service Providers can be welfare experts under Section 15 of the Act.
- When an aggrieved person directly approaches the Court to file an application for relief/s and the Court feels that she needs support services, the Magistrate can refer her to any of the SPs in the list maintained for this purpose by POs.
- SPs that are unable to provide services may refer domestic violence victims to other organisations, even if the other organisations are not registered under the Act. This saves the Court the trouble of having to direct the PO to look for an appropriate organisation and helps the victim receive aid as soon as possible.
- The Court may direct the SP to ensure the safety and security of a woman and her children.

3.3 Role of Shelter Homes

Section 2(t) of the Act defines "shelter homes" to mean shelter homes notified by the state Government for the purposes of this Act. The manner of issuing such notification is to be determined by the respective State Government.

As per Section 6 of the PWDVA, if an aggrieved person or, on her behalf, a Protection Officer or a Service Provider requests the person in charge of a notified shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home.

Rule 16 of the PWDVR further clarifies that although it is preferable that a request for shelter made by the Protection Officer or Service Provider, on behalf of the aggrieved person, be made in writing (so that a copy can be appended to a DIR, if one is prepared), a written request is not required. Further, shelter cannot be withheld on the ground that a DIR has not been filed. As per Rule 16(3), if the aggrieved person so desires, the shelter home should not disclose the identity of the aggrieved person, except to the Court.

If the notified shelter home does not currently have the capacity or resources to provide shelter, it can refer the aggrieved person to any other shelter home having adequate capacity. Where there is a pending application under Section 12 of the PWDVA, the Court should be informed of such referral.

3.4 Role of Medical Facilities

Medical facilities are defined under Section 2(j) of the PWDVA to mean a facility that is notified by the State Government as a medical facility for the purposes of this Act.

As per Section 7 of the PWDVA, if an aggrieved person or, on her behalf, a Protection Officer or Service Provider requests the person in charge of a medical facility to provide any medical aid to her, such person-in-charge of the medical facility shall provide such medical aid to the aggrieved person in the medical facility.

Rule 17 provides further details on the manner in which request for medical assistance ought to be made. Although the request for medical aid should, preferably, be made by the aggrieved person or the Protection Officer or the Service Provider in writing, an oral request must be honoured too. A medical facility cannot refuse medical assistance to an aggrieved person on account of her not having lodged a DIR prior to making a request for medical assistance or examination. As per Rule 17(4) of the PWDVR, a copy of the medical examination report shall be provided to the aggrieved person by the medical facility free of cost.

Rule 17 also empowers notified medical facilities to record DIRs based on complaints made by aggrieved persons. If no DIR has been filed prior to the request for medical aid, the person-in-charge of the medical facility must complete Form I and forward the same to the concerned PO.

As with the police and judiciary, medical professionals too can be biased against complaints of domestic violence. For instance, doctors may be sceptical about the truthfulness of women's accounts of violence. As with other implementing agencies under the PWDVA, medical professionals also need training and sensitisation in how to recognise symptoms of domestic violence and provide appropriate medical assistance.

Moreover, doctors, nurses and emergency room workers may often see and treat women who do not or cannot seek other kinds of assistance. In this case, coordinated programmes such as the DVRS might help to create a network of support for such women and their families.

3.5 Role of Legal Services Authorities

Section 5 of the PWDVA mandates the PO to ensure that an aggrieved person is informed of her right to free legal aid, as per the Legal Services Authorities Act, 1987. Section 9 mandates the PO to ensure that the aggrieved person is provided such aid.

Section 12(c) of the Legal Services Authority Act mandates State Legal Service Authorities to provide free and competent legal aid to women. They are also authorised to organise legal awareness programmes to sensitise people about their legal rights; to impart legal literacy through print and electronic media; and to conduct workshops and seminars for imparting legal training to empanelled advocates, POs, NGOs, police, doctors, etc.

3.6 Role of Counsellors

The psychological and emotional harm caused by domestic violence can be substantial and continue long after a Court has issued relief. But Court intervention should not be the only remedy available to women facing domestic violence. Counselling should be available too. It may be difficult for a woman facing domestic violence to take an informed and well-thought out decision as to her current circumstances and future course of action all by herself. Counselling aims to help a woman recognise and evaluate her own specific needs, thereby enabling her to take the first steps towards informed decision-making.

The PWDVA does not contain any explicit provisions on pre-litigation counselling, except to state that it is the duty of the PO to maintain a list of counsellors available in her/ his jurisdiction to whom she/ he can refer any aggrieved person who desires counselling services (Section 9 of the PWDVA and Rule 8 of the PWDVR).

However, the Act does contain detailed provisions on court-mandated counselling, beginning with Section 14(1) which states that, "The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possesses such qualifications and experience in counselling as may be prescribed".17 As per the Act, counselling may be undertaken with the aggrieved person alone, the respondent alone or jointly with both parties.

The purpose of providing such detailed guidelines in the law is to recognise domestic violence as a human rights violation that merits a comprehensive legal/institutional response rather than treating it merely as an 'internal family matter' that can be settled through informal mediation that could effect forced reconciliation. Under the PWDVA, counselling is recognised as an arena of technical proficiency, mandated to be conducted by professionals, in conditions that enable and focus on the woman's human rights and, as per Rule 14(3), only upon the furnishing of certain undertakings by the respondent that ensure there will be no future acts of violence. Finally, settlements must be attempted only if the aggrieved person so desires. As a civil law, the PWDVA does allow space for negotiations between the parties, an option that is not available under criminal law. Given this allowance, the provisions on counselling are intended to ensure that all negotiations are entered into keeping in mind the objective of the law: i.e., a woman's right to a violence-free home. The counselling process must respect the woman's agency and ensure that any settlements concluded are done so with the woman's free and informed consent and aim to create a violence-free home.

When counselling is conducted by lay people, there is a significant risk that the process followed and results achieved do not respect a woman's agency and fall short of basic human rights standards. If PO's conduct counselling themselves, an added concern of an explicitly legal nature arises from the duality of their role: namely, that in the pre-litigation stage, the role of the PO is to assist the aggrieved woman; but in the post-litigation stage, the PO is deemed to be an officer of the Court and assists the Court in discharging its functions. Pre-litigation counselling by a PO can create a potential conflict of interest vis-à-vis her/his position as an officer of the Court.

The remainder of Part 5.3.6 addresses the specific and limited duties of the PO with regard to counsellors. As per Section 9 and Rule 8 mentioned earlier, the PO is responsible for maintaining a list of Service Providers, including counsellors, in her/his jurisdiction. In order to maintain such a list, the PO must:

- Invite applications from SPs seeking particulars of the professionals whom they wish to register as counsellors under the Act.
- Inspect all the applications and forward a confirmed and formalised list of available counsellorsto all the concerned agencies, especially the Magistrate.
- Ensure that the list is current by regularly updating it every three years and duly forwarding the updated list to all the concerned agencies, especially the Magistrate.

We suggest the following guidelines to POs regarding the appointment of counsellors:

- Counsellors must be qualified professionals.
- Counsellors must have experience with cases of domestic violence and have knowledge of the psychosocial theories associated with the issues of domestic violence and its historical and political significance.

- Counsellors must have an understanding of the PWDVA and of the basic court procedures in which they are participating.
- Counsellors must be aware of how to create settlements and undertakings that will be enduring and admissible in court.
- Both the counsellor and the counselling centre need to be easily accessible and safe for the woman.
- Counsellors must be able to network with other SPs so as to provide the aggrieved person comprehensive assistance.
- Counsellors must have an established system of recording and maintaining documentation on cases.
- Counsellors must either already have or be willing to build a system of monitoring and evaluation of their work.
- Counsellors must have expressly stated ethics and should not be affiliated to any parties, political, religious or otherwise.

Once the Court has mandated counselling, the counsellor works under the general supervision of the Court or PO or both. Rule 14 of the PWDVR describes in detail the procedures to be followed by counsellors.

Finally, we must distinguish between some commonly misused terms. Although the PWDVR do not refer to *mediation, joint counselling,* which is akin to mediation, is appropriate in cases where the parties are desirous of a mediated settlement. However, just as an aggrieved person should not be compelled to undertake single counselling against her will, the Court should not direct joint counselling if the woman objects.

Joint counselling is not the same as *reconciliation*. Prevailing understandings of counselling within legal discourse often focus on reconciliation between the parties, particularly with regard to matrimonial and family disputes. Unfortunately, counselling has come to be identified with settlement and reconciliation. The terms are different. Counselling is the process whereby those counselled attempt to come to terms with their experiences and plan accordingly. A settlement is an agreement between parties to resolve a dispute. And, in matrimonial matters, reconciliation usually means that the husband and wife have begun to live peacefully as spouses once again. *Regardless of the term used, the goal is to avoid having the woman return to a violent home*.

There is a practice in some states that all cases under Section 498A, IPC are automatically referred for reconciliation, even before filing an FIR. Often the police refuse to take any action unless a counselling attempt, often supervised by the police themselves, fails. The practice is a poor one because it fails to empower the victim.

Moreover, a PO or counsellor should never attempt reconciliation of a couple as a crisis management technique. The safety of the victim should take precedence over all other steps taken during the crisis period. Close coordination between all protective services agencies (the police, the courts, legal aid and specialist NGOs, including shelter providers and medical facilities), is vital for the woman to remain safe. This goal takes priority over family reunification or the resolution of 'relationship issues,' and should be the foundation on which all treatment decisions, like counselling, are made.

How to Record a Domestic Incident Report

All complaints of domestic violence received by the Protection Officer have to be recorded as a Domestic Incident Report (DIR). The format of the DIR is provided in Form I of the PWDVR. This Chapter begins with an explanation of what the DIR is and then provides details on how information is to be recorded under each of the Form's seven major items. In so doing, This Chapter also provides information on how the substantive provisions of the PWDVA are to be understood.

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1 What is a Domestic Incident Report?

Section 2(e) of the PWDVA defines a Domestic Incident Report (DIR) as a "report made in the prescribed form on the receipt of a complaint of domestic violence from an aggrieved person". Form I of the PWDVR is the prescribed form referred to in this definition. It provides a simple, clear and convenient format for recording incidents of domestic violence.

A DIR is somewhat similar to an FIR recorded under criminal law, as it is a public record of a complaint. A Protection Officer is obliged to record a DIR on receiving a complaint of domestic violence.[1]

The DIR is to be filled and signed by the aggrieved person and countersigned by the PO.

Role of the Protection Officer vis-à-vis the Recording of a DIR

1 Rule 5(1)

A PO has to assist the aggrieved person in filling in the DIR, particularly in cases where the aggrieved person is either illiterate or incapacitated in any manner. In such cases, the PO, after filling in the DIR, must explain its content to the aggrieved person before obtaining her thumb impression or her signature, as the case may be. The PO must also give the original copy of the DIR to the aggrieved person, free of cost, on all occasions.

In cases where the aggrieved person is able to fill in the DIR by herself, it is advisable for the PO to counsel her on the content of the DIR and the manner in which information is to be recorded, prior to her filling in the DIR.

A DIR is meant to be a faithful record of the complaint presented and is not a report of an investigation.

The PO need not conduct any enquiries at the time of recording the DIR. However, the PO must ensure that the DIR is completed with care and precision and accompanied by all relevant supporting documents.[2]

The recording of a DIR does not trigger any judicial or investigative processes, as it is merely a public record of a complaint of domestic violence. Judicial processes are commenced only if the aggrieved person so desires. In order to initiate a judicial process, an application under Section 12 has to be filed in Court.[3]The DIR is to be attached to any such application filed.

Even if the aggrieved person chooses not to file an application, the PO has to forward copies of all DIRs recorded to the Magistrate within whose jurisdiction the alleged act of domestic violence has occurred.[4]

A Magistrate has to consider any DIRs received from a PO before passing any Orders under the PWDVA. The Magistrate may, therefore, need to consider not only the DIR that is filed along with the application, but also those DIRs that may have been forwarded by the PO on earlier occasion/s. As a public record of an incident of domestic violence, the DIR constitutes valuable evidence of past incidents of domestic violence.

If she so chooses, an aggrieved person may directly approach the Court with an application under Section 12, without a DIR. In such cases, the Magistrate may direct the PO to record a DIR and file it in Court if the application does not provide adequate details or if a DIR has not been recorded and forwarded to the Magistrate on any previous occasion/s. In certain cases, where the Magistrate may not feel the need for a DIR, he/she may proceed with the case without one.

Registered Service Providers (SPs)[5] and notified medical facilities[6] are also allowed to receive complaints of domestic violence and record DIRs. In such cases, both SPs and medical facilities will have to forward a copy of the DIR to the PO.

A DIR should be recorded whenever an aggrieved person approaches a PO with a complaint of domestic violence, even in those cases where the aggrieved person does not wish to file an application under the PWDVA.

An aggrieved person may, if she chooses, record a separate DIR for each distinct incident of domestic violence.

2 Details of the Complainant/Aggrieved Person

[Form I : Item 1]

2 For the list of documents to be attached to the DIR, see Part 6.6
3 For details on the filing of applications, see next Chapter.
4 Rule 5(1)
5 Section 10(2)(a)
6 Rule 17(3)

FORM I

1. Details of the complainant/aggrieved person
   - (1) Name of the complainant/aggrieved person
   - (2) Age
   - (3) Address of the shared household
   - (4) Present Address
   - (5) Phone number, if any

An *aggrieved person* can file a complaint under the PWDVA. Section 2(e) of the PWDVA defines "aggrieved person" as: "Any woman who is, or has been, in a domestic relationship with the respondent and 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[.]"(Emphasis added)

A woman who complains of an act of domestic violence must meet two requirements:

(i) That she is or has been in a domestic relationship with the respondent;

and

(ii) That the respondent has subjected her to act/s of domestic violence.

The second requirement is discussed in Part 6.5 below. The first requirement is discussed here. As defined in Section 2(f), a domestic relationship is the relationship between two persons who live or have lived together in a *shared household*.

The broad definition provided in Section 2(f) covers all forms of relationships within the household such as:

(i) Consanguine or blood relationships (such as grandfather-granddaughter, father-daughter, brother-sister relationships, etc.), where the parties are living together in the same house, i.e., the shared household.

(ii) Marital relationships or relationships in the nature of marriage. The term "marriage" refers to legally valid marriages. The term "relationships in the nature of marriage" includes:

   (a) Relationships of cohabitation or live-in relationships.

   (b) Relationships between a man and a woman that have elements of a marital relationship but do not meet the requirements of legal validity, such as void[7] or voidable[8] marriages, customary marriages[9] and common law marriages.[10]

(iii) Adoptive relationships

(iv) Family members living together as a joint family. The term "joint family" is typically understood to mean the Hindu Undivided Family (HUF). However, in the PWDVA, the term is not restricted to the HUF and, instead, is used more broadly to cover any family members living in the shared household. This category includes relationships

7 "Void" or null marriages are those that have no legal effect, i.e., it is as if the marriage had not existed at all. Family laws of each community enlist grounds on which a marriage may be considered void. An example would be if one of the parties was insane or incapable of giving consent at the time of marriage.

8 "Voidable" marriages are valid until annulled. Such marriages can be either affirmed or rejected at the option of one of the parties. A voidable marriage is valid as long as one of the parties does not apply for its annulment.

9 Customary marriages are those which are performed in accordance with customary or traditional or tribal practices/norms. Such marriages are not strictly legal in nature. An example of such a marriage is a nata relationship, a practice common in Himachal Pradesh.

10 Individuals who have lived together for a substantial period of time and who represent to the world that they are married can be said to be in a common law marriage.

between uncles and nieces, cousins, etc., as long as they live together in the same house, i.e., in the shared household.

By including relationships in the nature of marriage in its definition of a domestic relationship, the PWDVA does not recognise or legitimise bigamous marriage, as this law operates in addition to other laws, including those laws that penalise bigamous marriage. The intent of the PWDVA's inclusive definition is to remedy domestic violence faced in all forms of domestic relationships.

Women aggrieved by bigamous marriage may pursue remedies available under other criminal or civil laws.

Divorced women can also file complaints for acts of domestic violence. It must be understood that divorce does not always entail an end to domestic violence. In some cases, divorce can even intensify violence directed towards the ex-wife. Although the legal bond may be broken, often an emotional one remains. Further, in a large number of cases, women are effectively compelled to give up custody, maintenance and other rights in order to escape a violent home. However, while a divorced woman can complain under the PWDVA, the nature of reliefs to which she is entitled to will depend upon the terms of settlement entered into at the time of her obtaining her divorce.

The *shared household* has been defined in Section 2(s) to mean the residence where the aggrieved person lives or has lived with the respondent in a domestic relationship. The use of the term "has lived" in the shared household in the definition of "domestic relationship" brings within its ambit those women who have been illegally dispossessed from the shared household. However, it excludes from its ambit women who visit houses of relatives, as short or temporary visits cannot be equated with living on the premises.

Aggrieved persons who have not lived in a shared household or who lived in a shared household but did not do so in a domestic relationship are not eligible for relief under the PWDVA.

Shared households may include households:

(i) That are owned or tenanted either jointly by the aggrieved person and the respondent, or by either of them.

(ii) Where the aggrieved person or the respondent or both have any right, title, interest or equity, either singly or jointly.

(iii) Which may belong to the joint family of which the respondent is a member, irrespective of whether either the aggrieved person or the respondent has any right, title or interest in the household.

(iv) Which are allocated to the respondent as an employee, such as company accommodation or government accommodation, provided that the aggrieved person and respondent reside in those premises in a domestic relationship.

Court Interpretations of the Definition of "Shared Household"

In a recent judgment of the High Court of Madras in Vandana v Mrs Jayanthi Krishnamachari and others [(2007) 6 MLJ 205 (Mad)], a broad interpretation was given to the definition of "shared household". In this case, the respondent husband contested the right of his aggrieved wife to reside in the shared household on the grounds that the parties had not "lived together" in the shared household even for a single day after their marriage. The Court, upholding the right of the aggrieved wife to reside, held that she had a de jure (substantive

right) right to live in the shared household because of her status as a wife in a domestic relationship.

In Batra v Batra [1 (2007) DMC 1 SC], the Supreme Court of India held that an aggrieved wife has the right to reside in the shared household, which meant a house belonging to or taken on rent by the husband, or a house which belongs to the joint family of which the husband is a member. However, in this case, the couple lived together in the matrimonial home belonging to the husband's mother. The husband subsequently moved to separate rented premises. Hence the Court held that the aggrieved wife did not have a right to reside in the matrimonial home as the husband was residing on separate premises.

Court Interpretations of the Definition of "Shared Household" (con't.)

Following the Supreme Court's judgment in the above case, the High Court of Madras in P Babu v Rani [Crl. R.C. Nos. 48 and 148 of 2008 and M.P. Nos. 1 of 2008] took note of the fact that after the dispute arose between the parties, the respondent husband alienated the shared household in favour of his mother to the detriment of the aggrieved wife. Because the respondent husband had acted deliberately to deny the aggrieved wife her rights under the PWDVA, the Court upheld the right of the aggrieved wife to the shared household despite it being legally owned by the mother-in-law. The effect of this judgment is that in cases where the respondent husband has taken separate premises, there is need to confirm that this was done in good faith and not to frustrate the rights of the aggrieved wife.

For detailed information and analysis of case law, see LCWRI's *Handbook on Law of Domestic Violence*

3 Details of the Respondent

[Form I : Item 2]

FORM I				
2.	**Detail of Respondents:**			
S.No.	**Name**	**Relationship with the Aggrieved person**	**Address**	**Telephone No., If any**

The definition of *respondent* provided in Section 2(q) of the PWDVA includes:

(i) Any adult male who is or has been a domestic relationship with the aggrieved person. For example: fathers, husbands, brothers, uncles (both maternal and paternal), male partners and men living in a relationship in the nature of a marriage with the aggrieved person.

(ii) Any relative of the husband or the male partner. This covers all relatives of the husband/male partner, including female relatives. For example: the husband/male partner's father, mother, sister, etc.

Female relatives of a male respondent can be respondents, just as they can be prosecuted as members of the husband's family under Section 498A, IPC. However, complaints against any females who are not related to the husband or the male partner cannot be filed under the PWDVA. For instance, a daughter cannot record a complaint

solely against her mother. Similarly, a mother-in-law cannot record a complaint against her daughter-in-law (whereas a daughter-in-law can record a complaint against her mother-in-law). However, in such cases, aggrieved persons can record a complaint against the father or the son for abetting acts of violence perpetrated either by the mother or the daughter-in-law by failing to prevent the commission of such acts.

At the time of filling in this item, it is advisable to record the address of the respondent's residence as well as his office address and contact details.

4 Details of Children

[Form I : Item 3]

FORM I

3. Details of children, if any, of the aggrieved person:

(a) Number of Children:

(b) Details of children:

Name	Age	Sex	With whom at Present residing

The details of the children of the aggrieved person have to be filled in under this item. If the aggrieved person has children, then it is essential that each child be mentioned, beginning with the eldest, along with other details as required in the Form. This information is especially needed in cases where the aggrieved person is desirous of obtaining either maintenance or temporary custody orders.

In Section 2(b), the PWDVA defines "child" to mean any person below the age of eighteen and includes in its definition adopted, step and foster children of the aggrieved person.

If the aggrieved person does not have any children, then "N.A." (Not Applicable) is to be entered in Item 3 of Form I.

5 Incidents of Domestic Violence

[Form I : Item 4]

In order to ensure that information in this item is recorded accurately, a Protection Officer must have an understanding of the definition of domestic violence provided in Section 3 of the PWDVA.[11]

Section 3 begins with a general description of the acts that constitute violence and then itemises and explains different forms of abuse, which may be physical, sexual, verbal and emotional or economic in nature. Please note: this listing is for illustrative purposes

11 The PWDVA derives its definition of domestic violence from the United Nations Model Legislation on domestic violence. This Model Legislation was passed by the United Nations Commission on Human Rights 1996. The Model Legislation provides comprehensive guidelines for states in drafting domestic violence laws. The PWDVA consciously complies with the Model Legislation's standards. According to the Model Legislation, "All acts of gender-based physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry or bride-price related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed 'domestic violence'".

and is not an exhaustive one. Item 4 of Form I allows for the convenient recording of domestic violence by listing examples of each form of abuse in Column 4.

No Form can include an exhaustive list of the manifold ways in which violence is perpetrated. Hence, Column 5 of Item 4 allows for the recording of "Remarks" should an aggrieved person wish to provide further information on the specific form and nature of abuse faced. Further, if the aggrieved person is unable to provide accurate details on the nature of abuse faced by filling in details required under Item 4, she can append additional sheets to the DIR to provide details on the exact nature of and circumstances in which she faced domestic violence.

5.1 General Definition of Domestic Violence

The manifestations and consequences of domestic violence vary widely. Domestic violence may result in physical injury, even death, and may cause devastating mental injury and psychological impairment. In view of such grave consequences, the PWDVA defines "domestic violence" expansively to include all acts of commission as well as omission that either harm or injure or endanger the health, safety, life, limb or well-being of the aggrieved person.

The concepts of "harm,"[12] "injury"[13] and "endangerment,"[14] although derived from tort law, should be accorded their ordinary meaning, bearing in mind that the broad purpose of the PWDVA is to safeguard women from actual or threatened domestic violence.

It is not necessary that the aggrieved person suffer actual harm or injury; any act that either endangers or threatens to endanger the health, safety or well-being of the victim also constitutes domestic violence. The PWDVA's definition of domestic violence also includes threat of abuse and behaviour that tends to harm or injure. A threat of injury, even when the injury does not occur, invariably results in mental and emotional distress and itself constitutes mental and emotional abuse.

Thus, Section 3 of the PWDVA is comprised of four independent components:

(i) Sub-section (a), which sweepingly addresses behaviour that "harms or injures or endangers the health, safety, life, limb or well-being" of the aggrieved person.

(ii) Sub-section (b), which addresses behaviour undertaken to unlawfully obtain dowry or any other property.

(iii) Sub-section (c) which specifies that the threat to undertake behaviour in either subsection (a) or (b) is itself domestic violence.

(iv) Sub-section (d), which is the broadest provision, encompasses any other behaviour that injures or causes harm to the aggrieved person.

The concept of human dignity underlies each of the component parts of the definition. Any conduct that violates a woman's dignity thereby causing injury will constitute "domestic violence".

After enlisting the forms of conduct that result in domestic violence, Explanation II of Section 3 specifies that, "for the purposes of determining whether any act, omission, commission or conduct of the respondent constitutes domestic violence, the overall facts and circumstances of the case shall be taken into consideration." Hence the emphasis is on

12 "Harm" means injury, loss or damage.

13 "Injury" is a wrong or an injustice that demeans another's dignity. It is a legally redressable violation of another person's rights.

14 "Endangerment" is the act of putting something or someone in danger. Endangerment may arise either as an affirmative or deliberate act (i.e., actively putting someone or something in danger) or as a passive act (i.e., by neglecting or refusing to do something).

the nature of injuries/harm sustained by the aggrieved person due to the acts of domestic violence.

Since the PWDVA is a civil law, when the Courts determine whether or not an act results in injury/ harm that amounts to domestic violence under the Act, they assess the evidence on a standard of "balance of probabilities," which is a lower standard than the "proof beyond reasonable doubt" standard required in criminal law.[15]

The Table below provides examples of all forms of abuse or violence listed under Section 3 of the PWDVA.

Illustrations of different forms of violence				
Physical Violence	**Sexual Violence**	**Verbal Abuse & Emotional**	**Economic Violence**	**Dowry related harassment**
• Punching • Bashing/ Banging her head against walls or other objects • Choking/shaking • Slapping • Pinching • Kicking • Hitting with anything • Biting • Burning with a cigarette/ iron/ oven/ setting on fire • Throwing things in general or at her Strangling	• Forced sexual intercourse. • Forced to watch pornography or other obsence material • Forcibly using you to entertain others • Any other act of sexual nature, abusing, humiliaging, degrading or otherwise violative of your dignity (please specify tetails in the space provided below):	• Accusation/ aspersion on your character or conduct, etc. • Insult for not bringing dowry, etc. • Insult for not having a male child. • Insult for not having any child. • Demeaning, humiliating or undermining remarks/ statement. • Ridicule. • Name calling. • Forcing you to not attend school, college or any other educational institution.	• Not providing money for maintaining you or your children. • Not providing food, clothes, medicine, etc., for you or your children. • Forcing you out of the house you live in. • Preventing you from accessing or using any part of the house. • Preventing or obstructing you from carrying on your employment.	• demands for dowry made, please specify • Any other details with regard to dowry, please specify.

15 The scale of "balance of probabilities" is used in civil law. In using this scale, the decision of the Court is based on which of the two competing claims is most likely to have happened. On the other hand, decisions in criminal law are based on "proof beyond reasonable doubt", wherein no reasonable person can have any doubt on what actually occurred.

Illustrations of different forms of violence				
Physical Violence	**Sexual Violence**	**Verbal Abuse & Emotional**	**Economic Violence**	**Dowry related harassment**
• Strangling • Pushing in general or against walls and other objects/pushing under water etc. • Pulling hair • Spitting or peeing on the victim • Tying her up/ tying her hands behind her back, etc. • Being held down • Locking up in a cupboard or closet • Threatening/ Attacking with a knife, gun, belt, or any other kind of weapon/forcing her tohurt herself		• Preventing you from taking up a job. • Forcing you to get married against your will. • Preventing you from leaving the house. • Preventing you from meeting any particular person. • Preventing you from marrying a person of your choice. • Forcing you to marry a person of his/their own choice. • Any other verbal or emotional abuse. (please specify in the space provide below)	• Not allowing you to take up an employment. • Non-payment of rent in case of a rented accommodation • Not allowing you to use clothes or articles of general household use. • Selling or pawing your stridhan or any other valuables without informing you and without your consent. • Forcibly taking away your salary, income or wages etc. • Disposing your *stridhan* • Non-payment of other bills such as electricity, etc. • Any other economic violence (please specify in the space provided below)	

`5.2 Physical Abuse

FORM I

4. Incidents of domestic violence

S. No.	Date, place and Time of violence	Person who Caused Domestic Violence	Types of violence Physical violence	Remarks
			Causing hurt of any kind, Please specify	

Explanation I (i) of Section 3 defines "physical abuse" or violence as any conduct that:

(i) Causes bodily pain or harm, or

(ii) Endangers life, limb or health, or

(iii) Impairs the aggrieved person's health or development.

This provision also includes assault, criminal intimidation and the use of criminal force as examples of conduct amounting to physical abuse. The examples provided are meant to be illustrative rather than exhaustive.

Physical violence is the most obvious type of domestic violence. Some examples of physical abuse are:

- Beating
- Slapping
- Hitting
- Biting
- Strangulation
- Punching
- Kicking
- Pushing
- Shoving
- Forcibly evicting a person from their residence
- Use of tools or weapons to inflict physical harm
- Other acts which may result in fear, injury or even death.

Evident symptoms of physical violence may include visible scars of injuries sustained or injuries that are untended and/or have healed poorly due to the lack of attention. Common type of injuries include:

- Contusions, abrasions and minor lacerations, as well as fractures and sprains
- Injuries to the head, neck and chest
- Injuries during pregnancy
- Multiple sites of injuries
- Repeated or chronic injuries

- Chronic pain, may also include psychogenic pain (psychologically induced pain, normally non-specific in nature), or pain due to diffuse trauma without physical evidence
- Sexually transmitted diseases
- Damage to sexual organs and anus (this is often a sign/consequence of sexual violence and lack of control over the sexual relationship)

Fifty percent of women who were physically abused, reported violence during their pregnancy.

[Source : *Domestic Violence in India: A Summary Report of a Multi-Site Household Survey*. Washington, D.C.: International Center for Research on Women. 2003.]

5.3 Sexual Abuse

FORM I

4. Incidents of violence

(i) Sexual violence

Please tick mark (√) in the column applicable

	• Forced sexual intercourse. • Forced to watch pornography or other obsence material • Forcibly using you to entertain others • Any other act of sexual nature, abusing, humiliaging, degrading or otherwise violative of your dignity (please specify tetails in the space provided below):		

Around the world, 1 in 3 women have been beaten, coerced into sex, or otherwise abused in their lifetime. Most often, the abuser is a member of her own family.

[Source : Heise, Lori; Mary Ellsberg; Megan Gottemoeller. Ending Violence Against Women. Population Reports, Series L, No. 11. Baltimore: Johns Hopkins University School of Public Health, Population Information Program. 1999.]

Explanation I(ii) of Section 3 states that, "sexual abuse includes any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of a woman." (Emphasis added)

This broad definition is not merely limited to rape or acts of penetration, but also includes all acts that are sexual in nature which cause an affront to the aggrieved person's

dignity. This inclusive definition is a legislative first in India. It takes into account the fact that sexual violence ranges from the perpetrator of violence treating the victim as a sexual object to actual rape (regardless of marital status). It may manifest in violent behaviour, like forcing sex, physical attack to sexual organs, coercion to participate in unwanted sexual activities (such as having sex in front of children) or behaviour that is degrading to the person's sense of dignity.

Sexual abuse means all non-consenting sexual encounters or encounters within the family in which someone is either pressured, coerced (expressly or through implication) or forced into sexual activity. If one of the persons is under 16 years of age and a child, foster child, step-child, grandchild, nephew or niece of the other person, it is assumed that they cannot give valid consent and, thus, sexual activity involving them constitutes violence under any circumstances.

Sexual violence includes behaviour such as forced fondling, fellatio or cunnilingus, anal or vaginal penetration or sexual violence on children in the family and female genital mutilation. It can also include exploitation through forcing someone to have photographs or films taken of a sexual nature or being shown such films or photographs, or by forcing someone into prostitution.

Particularly relevant to the discussion of domestic violence is the category of "battering rapes" as a form of marital rape, where the sexual assault occurs in combination with physical beatings and psychological abuse. Research indicates that men who both batter and rape are more likely to severely injure or kill their wives. However, even today, such sexual assault by a husband or an intimate partner is not considered a crime in most countries, and women in many societies do not consider forced sex as rape if they are married to or cohabiting with the perpetrator. The assumption is that once a woman enters into a contract of marriage, the husband has the right to unlimited sexual access to his wife. This thinking is also reflected in the Section 375 of the IPC, which does not recognise marital rape as an offence.

Lack of control over the choices made within the sexual relationship may also be counted as violence as it may lead to the woman having little or no voice in the matter of contraception and reproduction and may lead to her contracting sexually transmitted diseases. Studies have shown that abused women are more likely to have a history of sexually transmitted diseases and vaginal and cervical infections.

However, there are other forms of "sex-specific" violence where the sexual assault is not accompanied by physical assault, but rather is seen as a main form of coercion by which the partner is victimised. The amount of physical violence used is just enough to coerce the victim into having sex and appears to be motivated primarily by a desire to overpower and control the victim. In many of these cases, the brutality or coercion is based on the perpetrator believing that he has the right to have sex with his spouse or partner on his own terms. It is important to remember that when a woman 'consents' to have sex because she fears violent retribution upon her refusal, then her 'consent' is actually not consent at all, but the result of coercion. In these cases, the perpetrator has committed an act of abuse.

A different type of marital rape to watch out for, which is perpetrated by individuals with deviant sexual arousal patterns, typically involves obsessive forced sex. Here victims are required to have an extraordinary number of sexual encounters or to have sex as a form of sadistic, brutal or perverse behaviour. Once again, without a woman's freely-given consent, the act becomes abusive in nature.

5.4 Verbal and Emotional Abuse

In a study, 40.3 percent of women surveyed reported physical abuse by their partners and 43.5 percent reported psychological abuse, i.e. violence that is not physical in nature.[16]

However, psychological violence is insidious and is harder to capture in quantitative studies.

FORM I

1. Incident of domestic violence

(ii) Verbal and Emotional Abuse

Please tick mark (√) in the column applicable

		• Accusation/aspersion on your charcter or conduct, etc. • Insult for not bringing dowry, etc. • Insult for not having a male child. Insult for not having any child. • Demeaning, humiliating or undermining remarks/statement. • Ridicule. • Name calling • Forcing you to not attend school, college or any other educational institution. • Preventing you from taking up a job. • Forcing you to get married against your will. • Preventing you from leaving the house.	

16 Source : Domestic Violence in India: A Summary Report of a Multi-Site Household Survey. Washington, D.C.: International Center for Research on Women. 2003.

		• Preventing you from meeting any particular person. • Preventing you from marrying a person of your choice. • Forcing you to marry a person of his/their own choice. • Any other verbal or emotional abuse. (please specify in the space provide below)	

Explanation I(iii) of Section 3 of the PWDVA defines verbal and emotional abuse to include:

(i) Insults, ridicule, humiliation, name calling or ridicule specially with regard to not having a child or a male child.

(ii) Repeated threats to cause physical harm to any person in whom the aggrieved person is interested.

Form I also enlists different forms of conduct that constitute verbal and emotional abuse. In both cases, the examples cited are illustrative rather than exhaustive.

Although included as a single category, "verbal" abuse and "emotional" abuse are distinctly different concepts, which may not occur simultaneously. Emotional abuse, for example, may occur without any accompanying verbal abuse (for instance: ostracism), yet both may be harmful and deserving of legal protection.

This form of violence has many different dimensions: it may include anything from isolation of the victim, to threatening violence, stalking, destroying property, kidnapping and using other forms of intimidation. Whether manifested as name calling, ridiculing, threatening, humiliation, manipulation through lies and mind-games or using other forms of verbal abuse, verbal and emotional violence is a systematic and purposeful form of degradation of the victim.

Name calling is not trivial; it erodes the victim's self-esteem and often leads to greater isolation.

Verbal and emotional abuse can be seen in verbal statements or acts that result in the destruction of the victim's self-esteem. The abusive partner exercises control or power over the victim who, over time, feels deserving of the abuse, worthless and insecure, becomes overly dependent on the abuser and is afraid of being abandoned by him.

A common form of this violence of which to take note appears in relationships where violence has occurred in the past. In these cases, emotional violence takes the form of repeated threats, which can cause strong fear and uncertainty. This "psychological battering" is particularly disabling because the victim is unable to foresee if or when violence might occur and in what form. Her anticipatory anxiety resulting from threats

can be as excruciating as the violence itself. Often, therefore, victims will say that ongoing emotional violence – emotional torture and living in constant terror – is more unbearable than physical brutality. Such mental stress also leads to a high incidence of suicide attempts and suicide.

Emotional abuse may also take the form of isolating the victim in an effort to control her environment. Such isolating actions include: cutting the victim off from family, friends and other relationships, belittling the victim's family and friends, restricting freedom of movement and preventing the victim from discussing violence problems with anyone. A victim who is isolated is more likely to believe what the perpetrator says about herself and the world. Isolation deprives the victim of support and perspective, making it difficult for her even to recognise the violence for what it is, and, thus, reinforces the perpetrator's emotional control over her.

The perpetrator may also intimidate the victim by making repeated threats against her children, family and friends. He could threaten to kill her or her loved ones, kidnap her children, make her lose her job, expose things about which she may be ashamed, etc. He could instil fear through looks, gestures and actions; for example: smashing objects, destroying property, placing himself between the victim and an escape route, etc.

In addition, the perpetrator may threaten to commit suicide, holding the victim responsible. Often such threats increase when the victim is leaving the relationship.

Threats to Take Away Children

Threats to take away the children are not idle ones. Courts often give custody to perpetrators of the violence. Many victims return to stay with the perpetrators rather than risk losing their children.

Destruction of Property

Aware of the fact that the victim may be fearful of leaving all of the family's possessions at home where the perpetrator has access to them, perpetrators often destroy items belonging to the victim, such as family heirlooms or gifts from someone the victim cares about. The perpetrator may also break down doors, tear out phones, put holes in walls, destroy the children's toys and other family belongings.

Injury to Pets

Knowing that pets are a source of comfort to the victim and her children, the perpetrator might kill or threaten to kill family pets. Fear of what the perpetrator might do often makes the victim hesitant to leave, since, in most cases, pets must be left behind and can become another tool the perpetrator uses to intimidate and coerce the victim.

5.5 Economic Abuse

FORM I

4. Incident of domestic violence:

(iii) Economic violence

Please tick mark (√) in the column applicable

		• Not providing money for maintaining you or your children. • Not providing food, clothes, medicine, etc., for you or your children. • Forcing you out of the house you live in. • Preventing you from accessing or using any part of the house. • Preventing or obstructing you from carrying on your employment. • Not allowing you to take up an employment. • Non-payment of rent in case of a rented accommodation • Not allowing you to use clothes or articles of general household use. • Selling or pawing your stridhan or any other valuables without informing you and without your consent. • Forcibly taking away your salary, income or wages etc. • Disposing your stridhan • Non-payment of other bills such as electricity, etc. • Any other economic violence (please specify in the space provided below)	

Explanation 1(iv) of Section 3 of the PWDVA and Form I of the PWDVR set out a (non)exhaustive list of types of economic abuse that constitute domestic violence. At the crux of this list is the denial of basic entitlements and necessities.

There are several ways in which a perpetrator exerts control over the victim: in Part 5.4 above, we discussed the different ways in which a perpetrator tries to control the victim's environment by physically and emotionally isolating her from friends and family. Here we discuss how a perpetrator can control a victim by withholding access to economic resources and, thus, constraining the woman's ability to control her life.

Economic violence can take many forms. It may involve an individual in the family controlling all the money, making the victim beg for every little thing and account for any money spent. Or the perpetrator could deny the victim access to the money she herself earns outside the house, her own bank account or her stridhan, making the victim

routinely ask for money for every necessity like vegetables or medicine. The perpetrator might forbid the woman from working outside the home, thus removing any source of independent income. Or he might force her out of the house, not allow her to use clothes or articles of household use or demand dowry (about which more in 5.6 below).

This is a very effective way control a woman because she is denied all the basic resources she needs to survive. However, the actual process used by the perpetrator may be much more subtle: the perpetrator might even seem gracious and gallant. For instance, he might claim that working outside the home or handling finances is not a woman's 'natural role' and that it is, in fact, his 'duty' to 'take care' of the woman.

5.6 Dowry-Related Harassment

FORM I

4. Incident of domestic violence:

(iv) Dowry related harassment

Please tick mark (√) in the column applicable

			• demands for dowry made, please specify • Any other details with regard to dowry, please specify. • Whether details of dowry items, stridhan, etc. attached with the form • Yes • No

Section 3(b) defines domestic violence in the context of dowry-related harassment and other unlawful demands for property or valuable security: any conduct by the respondent that "harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry, or other property or valuable security" amounts to domestic violence.

In this definition, the term "related to" means members of the aggrieved person's natal family and her guardians. Thus, in this context, a respondent who harasses an aggrieved person in order to coerce the aggrieved person's family member into meeting an unlawful dowry demand has committed domestic violence.

Principles laid down by the Courts under Sections 498A IPC, Section 304B IPC and the Dowry Prohibition Act are relevant in understanding the meaning of Section 3(b).[17]

17 For information on these related provisions, see Chapter 3 and Annexure III.

5.7 Other Forms of Abuse

FORM I

4. Incident of domestic violence:

(v) Any other information regarding the acts of domestic violence against you or your children

In recognition of the impossibility of creating a format that can list each of the innumerable ways in which domestic violence is manifested, Form I provides space for recording specific forms of violence that cannot be categorised under any of the entries discussed in Parts 5.2 - 5.6 above.

The provision of this space also corresponds to Sub-section (d) and Explanation II contained in Section 3 of the PWDVA. Section 3(d) deems any conduct that, "otherwise injures or causes harm, whether physical or mental, to the aggrieved person" to constitute domestic violence. Explanation II specifies that, "for the purpose of determining whether any act, omission or commission or conduct of the respondent constitutes domestic violence, the overall facts and circumstances of the case shall be taken into consideration". Domestic violence occurs in an almost infinite variety of ways and this space in Form I is designed to record additional or specific complaints that may not be captured while filling in details under the other entries.

If an aggrieved person is unable to provide information in the format provided in Form I, she can provide descriptions and details of the domestic violence faced on additional sheets that can be attached to the DIR.

6 List of Documents to be Attached

FORM I

5. List of documents attached

Name of document	Date	Any other detail
Medico-legal certificate		
Doctor's certificate or any other prescription		
List of *stridhan*		
Any other document		

As mentioned earlier, the DIR is a public record of a complaint. In order to ensure that the DIR is complete, a Protection Officer must ask the aggrieved person for relevant documentation to be put on record. For this limited purpose, the PO may conduct enquiries to ensure that all relevant documents are brought on record. These documents constitute crucial evidence if the aggrieved person subsequently opts to file an application for reliefs.

Please note: the documents mentioned under this Item, while relevant, are not a pre-requisite for recording a DIR. Hence, an aggrieved person can record a DIR even if she unable to provide any relevant documents.

Under this Item, the date and details of the documents attached to the DIR are to be recorded. The documents mentioned in the Form are self-explanatory. The aggrieved

person may also include other documentation and record its details under the heading "any other documents".

Documents that can be attached to a DIR can be divided into three broad categories:

(i) Documents that are needed to prove domestic violence:

(a) Medico-Legal Certificate

(b) All documents/certificates issued by any treating medical doctor pertaining to the relevant act/s of domestic violence or which record injuries sustained as a result of domestic violence.

(c) All documents issued by a mental health professional pertaining to the aggrieved person's psychological status.

(d) Any First Information Report (FIR) or Non-cognisable [Offence] Report (NCR) alleging domestic violence previously registered by the aggrieved person.

(e) Copies of complaints received by any other authorities that the aggrieved person may have approached for assistance. For example: complaint letters to the respondent's employer, petitions submitted to panchayats or other adjudicatory bodies alleging domestic violence, petitions filed before the State Commission for Women or other statutory bodies alleging domestic violence.

(f) Correspondence between the aggrieved person and other family members in which she records incidents of domestic violence. It is important that such correspondence be dated. If the correspondence is through email, then the date automatically appears on the mail. However, if the correspondence is through post it is advisable to ask for the envelope that bears the postal stamp documenting the date of the correspondence.

(ii) List of stridhan articles. Stridhan refers to any property that is given to the woman during the time of her marriage (either before the marriage – i.e., during engagement festivities, etc. – or during it or after – for festivals, etc.) or has been left to her by her parents, siblings, in-laws, friends (of either party) and relatives (of either party).

(iii) Documents that are needed to support claims for relief under the PWDVA:

(a) To prove a domestic relationship, particularly matrimonial relationships:

- Ration card
- Passport
- Photograph with mangal sutra
- Invitation cards of the wedding
- Bills of the marriage hall
- Photographs or video recordings of the marriage
- Certificate from the temple or priest who performed the marriage

(b) To provide a basis for claiming remedies under the law and for proving the aggrieved person's standard of living:

- All documents relating to joint bank accounts, salary statements, rent receipts, bills and other pertinent financial matters such as pay slips of the respondent, income tax returns, bank papers, share or bond certificates, receipts for significant purchases.

- All documents of tuition fees and other expenses of children.

7 Orders

FORM I

6. Order that you need under the Protection of Women from Domestic Violence Act, 2005.

S.No.	Orders	Yes/No	Any other
(1)	Protection order under section 18		
(2)	Residence order under section 19		
(3)	Maintenance order under section 20		
(4)	Custody order under section 21		
(5)	Compensation order under section 22		
(6)	Any other order (specify)		

Under this Item, the nature of relief required from Court is recorded. If an aggrieved person indicates that she requires Court-ordered relief, then an application under Section 12 in Form II must be filed.

The orders that can be obtained from Court are provided in Sections 18-22 of the PWDVA. Each of these Sections is further divided into sub-sections that allow the Court to grant specific orders to meet the aggrieved person's requirements.[18] For example, if an aggrieved person is apprehensive of further violence being inflicted by the respondent, she may seek an order under Section 19(b) directing the respondent to remove himself from the shared household.

The third column in this Item can be used to provide details on the specific order that the aggrieved person is seeking. This may also include supplementary details to ensure the enforcement of the order. For instance, the aggrieved person may seek police assistance to ensure that a respondent is removed from the shared household in an order under Section 19(b).

In order to fill in the DIR accurately, the aggrieved person must have knowledge of the legal remedies available under the PWDVA. Under Section 5 of the Act, the PO is duty-bound to provide information on such legal remedies.

While this Item is being completed, the PO must ensure that the orders sought are in consonance with the provisions of the PWDVA. The PO may also suggest appropriate remedies that meet with the aggrieved person's specific requirements. It is advisable to be specific on the nature of remedies sought. For instance, if the respondent is harassing the aggrieved person with repeated phone calls, an order restraining the respondent from contacting the aggrieved person should be specifically sought as part of the protection order. This aspect must be borne in mind particularly with regard to protection orders, as the breach of a protection order is an offence under Section 31 of the Act.

18 For further details on orders that can be sought under the PWDVA, see Chapter 7.

8 Assistance Required by the Aggrieved Person

FORM I

7. Assistance that you need

S.No.	Assistance available	Yes/No	Nature of assistance
(1)	**(2)**	**(3)**	**(4)**
(1)	Counsellor		
(2)	Police assistance		
(3)	Assistance for initiating criminal proceeding		
(4)	Shelter Home		
(5)	Medical Facilities		
(6)	Legal aid		

Recognising that an aggrieved person may require various kinds of assistance that are not limited to the provision of legal aid, the DIR allows for the recording of the nature of assistance sought. Once this is recorded, the PO must facilitate the aggrieved person's access to appropriate components of the Domestic Violence Response System.[19]

As mentioned in Chapter 5, notified shelter homes and medical facilities are obligated to provide shelter or medical services to an aggrieved person on a request made by the PO. In case the aggrieved person seeks shelter or medical services, a Protection Officer must, in accordance with Rules 16 and 17, make such a request in writing and attach a copy of the DIR to the written request.

Even if a DIR is not recorded, a medical facility or a shelter home cannot deny services to the aggrieved person on a request made by the PO.[20]

If a request is made to a medical facility without an accompanying DIR, the person-in-charge of the medical facility may fill in the DIR and forward a copy of the same to the PO of the jurisdiction.[21]

Domestic Incident Report: Key Points

- While registering the DIR, as far as possible, the aggrieved person should furnish all the details of domestic violence.
- The DIR can be recorded by a Protection Officer, a registered Service Provider or a medical facility.
- A woman may file a separate DIR for each act of domestic violence visited upon her.
- A DIR can be recorded where the incident of domestic violence occurred or where the aggrieved person resides/works.
- Recording the DIR does not automatically trigger judicial processes; these must be requested by the aggrieved person.
- Authenticated copies of prior DIRs may have evidentiary value in subsequent cases.

19 For further details on the Domestic Violence Response System, see Chapter 5.
20 Proviso to Rules 16(2) and 17(2)
21 Rule 17(2)

- A DIR might be useful to the aggrieved person in accessing other forms of support services.

9 Other Important Guidelines to Completing the Domestic Incident Report

If the matter reaches Court, the Court shall rely on the DIR as it is meant to be an authentic public record of the aggrieved person's complaint. It is, therefore, essential to ensure that a DIR is recorded with care and precision and, preferably, supported with all relevant documents.

Protection Officers must not act on information received anonymously as it is not authentic information. All information received by the PO must be reduced to writing and signed by the informant. In cases of emergency, a PO may, on the receipt of information from a reliable source, visit the place of occurrence of violence, along with a police officer, to record a DIR before initiating any legal action.[22]

It may happen that while filling the DIR, the aggrieved woman may not disclose all the information. Therefore, the PO should first counsel the aggrieved person on how to fill in the DIR with all the essential details. The PO can also verify the information by asking straightforward questions, as discussed in Chapter 5 (Part 5.2.2).

It is also possible that when an aggrieved person first approaches the PO, she may be too disturbed or traumatised to complete the DIR accurately. In such cases, the PO should use this first meeting to inform the aggrieved person of her rights and remedies under the law and facilitate her access to support services. The PO can then call her back at a later time when she is in a better frame of mind to record the DIR.

A PO must distinguish between information that is incomplete and that which is contradicting. While incomplete information can be completed at a later stage, new episodes cannot be invented without basis, as this gives rise to contradictions.

However, when adding further information to a previously incomplete DIR, it is advisable to do so on a new DIR. The PO can explain the two DIRs by pointing to the aggrieved person's traumatised state of mind at her first visit, which affected the information she was able to provide on her original DIR.

In those cases where the aggrieved person approaches the Court directly, whereupon the Court directs the PO to record and submit a DIR, the PO must refer to the application filed by the aggrieved person to ensure that the information recorded in the DIR is consistent.

The PO must also take utmost take care that no new submission is made in an application filed in Court that is not already mentioned in the DIR, unless there is documentation to prove the same.

Separate DIRs can also be recorded if the aggrieved person alleges new facts or episodes of violence. This can be done even if the application has already been filed in Court.

Best Practice : The Domestic Incident Report Index

The PWDVA furthers the desirable goal of developing and maintaining comprehensive, state-wide records by requiring DIRs recorded by POs to be forwarded to the local police and Courts.

The practice adopted by the police in Andhra Pradesh, in association with the state Department of Women and Child, takes this idea further. There, police

22 Rule 9

authorities have established a Domestic Incident Report Index which includes all DIRs recorded throughout the state and tracks their status in a standard format.

On registration of the DIR, a "Domestic Incident Report Number" is assigned to each complaint by the responsible PO. After the DIR is forwarded to Court and, upon the filing of Form II, the Magistrate assigns a "Domestic Violence Case Number". DIRs, DIR Numbers, and Domestic Violence Case Numbers, as well all other pertinent information, are maintained in the Index. To more closely monitor the status of both individual cases and the overall picture, authorities envision a "Domestic Incident Report Abstract" from which a system-wide "Quarterly Abstract" can be prepared and made available to all implementing agencies.

10 The Role of the Police in Recording the DIR

FORM I (8)

8. Instruction for the Police Officer assisting in registration of a Domestic Incident Report:

   Wherever the information provided in this Form discloses an offence under the Indian Penal Code or any other law, the Police Officer shall-

   (a) inform the aggrieved person that she can also initiate criminal proceedings by lodging a First Information Report under the Code of Criminal Procedure, 1973 (2 of 1974).

   (b) if the aggrieved person does not want to initiate criminal proceedings, then make daily diary entry as per the information contained in the domestic incident report with a remark that the aggrieved person due to the intimate nature of the relationship with the accused wants to pursue the civil remedies for protection against domestic violence and has requested that on the basis of the information received by her, the matter has been kept pending for appropriate enquiry before registration of an FIR.

   (c) if any physical injury or pain being reported by the aggrieved person, offer immediate medical assistance and get the aggrieved person medically examined.

The last Item of the DIR enlists the duties of the police. Although the PWDVA recognizes POs and SPs as the appropriate authorities for recording the DIR, the police are also likely to receive complaints of domestic violence.

Pursuant to Section 5 of the PWDVA, a police officer receiving a complaint of domestic violence is under a statutory duty to inform the aggrieved person of her rights under the PWDVA and of the availability of the services of POs, SPs and free legal services.

If the complaint discloses a cognisable offence, particularly an offence under Section 498A of the IPC, the police must inform the aggrieved person of her right to register an FIR and should conduct investigations as warranted. In those cases where the aggrieved person does not want to initiate criminal proceedings and chooses to pursue civil remedies instead, the police is required to record the complaint as a "daily diary entry" in the manner provided in the DIR.

In all instances, the police should refer the aggrieved person to a PO or SP for recording the DIR and taking further action.

11 What is to be done after the DIR is Recorded

After recording the DIR and ensuring that the documentation is complete, the Protection Officer must:

(i) Provide the original DIR to the aggrieved person.

(ii) Forward a copy of the DIR to the officer-in-charge of the police station of the jurisdiction within which the domestic violence has occurred.

(iii) Forward a copy of the DIR to the registered Service Provider in the jurisdiction.

(iv) Forward a copy of the DIR to the Magistrate in whose jurisdiction the domestic violence has occurred.

In cases where the DIR reveals a cognisable offence, but the PO forwards it to the Magistrate without an application for reliefs, the Magistrate may initiate suo moto action.

(v) It is advisable for the PO to retain a copy of the DIR recorded for her/his own records.

How to File an Application in Court

Under Section 12 of the PWDVA, an aggrieved person can present an application for relief/s to the Court. The same Section also allows a Protection Officer or any other person to file an application for relief/s on behalf of the aggrieved person. The law provides that it is the duty of the PO to make the application to the Magistrate for orders under the PWDVA, if the aggrieved person so requires. The format for preparing an application is provided in Form II of the PWDVR. The format for preparing an affidavit seeking Interim Orders is provided in Form III of the PWDVR. This Chapter provides information on the manner in which an aggrieved person may approach the Court and on how to complete Forms II and III. In so doing, this Chapter also provides information on the substantive law on orders and relief/s under the PWDVA.

Chapter Outline

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2 How Can an Aggrieved Person Approach the Court?
3 Role of the Protection Officer in Filing an Application in Court
4 General Aspects of Applications Filed in Court
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6 Other Details to be Completed in Form II
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1 Who Can File an Application?

Under Section 12 of the PWDVA, an aggrieved person can present an application for relief/s under the PWDVA to a Magistrate. An aggrieved person[1] is a woman who:

1 Section 2(a). Also see Section 2(f). For further details on the definitions of "aggrieved person," "domestic relationship," "shared household" and "respondent", see Chapter How to Record a Domestic Incident Report.

(i) Is or has been in a domestic relationship with the respondent;

and

(ii) Alleges that the respondent has perpetrated domestic violence on her.

In general, the PWDVA permits only women to bring claims.[2] A PO or any other person may also present an application on behalf of the aggrieved person or a child[3] who has been subject to domestic violence.

Protection of Children

Adults are not the only victims of domestic violence. Children may also be affected, whether at the hands of an abusive father or male relative or simply by experiencing the emotional trauma of witnessing the mother being subjected to domestic violence within the home.

A mother can bring an application on behalf of herself and a child in a domestic relationship on the ground that violence towards the child is also resulting in emotional and mental abuse to her. If the mother is unwilling, for any reason, to file an application for relief/s on behalf of the child, a Protection Officer may take suo moto action and file on behalf of the child.

Can Abused Domestic Workers File an Application under the PWDVA?

No. Domestic workers who are abused by their employers are not covered under the PWDVA.

The definition of "aggrieved person" is restricted to women who are or have been in a domestic relationship with the respondent. "Domestic relationship" is limited under Section 2(f) to relations of marriage, consanguinity, adoption, joint families or relationships in the nature of marriage. Domestic workers, who do not fall within the ambit of any of these relationships, are not protected by the Act.

However, domestic workers who have been subjected to violence may still use provisions constituting offences in the Indian Penal Code like hurt, grievous hurt, assault, criminal intimidation, and/or sexual harassment, among others.

2 How Can an Aggrieved Person Approach the Court?

The PWDVA provides multiple options to the aggrieved person to approach the Court, as discussed below.

- Option 1
  - (i) The aggrieved person approaches the Court directly, by filing an application either by herself or by engaging a lawyer.[4]
  - (ii) As per Section 26, another possibility is that the aggrieved person files an application, in any Court, for relief/s under the PWDVA in a pending legal proceeding that affects the rights of the aggrieved person and the respondent. This may be in ongoing cases of divorce, maintenance or custody in a civil or a family court or in criminal cases under Section 498A or other provisions of the

2 "Woman" is not defined under the PWDVA, but should be understood to mean any female, including those under the age of 18. A female under the age of 18 should be permitted to bring an application under Section 12 of the Act through an appointed guardian or a Protection Officer. Section 18(c) of the Act, which covers Protection Orders, mentions children in its reference to aggrieved persons.

3 Section 2(b) of the PWDVA defines "child" in a gender-neutral manner to include all male or female persons under the age of 18 and also includes any adopted child, stepchild or foster child.

4 In Milan Kumar Singh v State of UP [(2007) Cri LJ 4742], the Allahabad High Court held that an aggrieved person may directly approach the Magistrate without having to approach a Protection Officer first.

IPC, etc. This provision has been included to avoid multiplicity of proceedings and to facilitate an aggrieved person's access to Court.

In both the above instances, the aggrieved person may file the application after getting a DIR recorded by a PO or SP. A copy of the DIR would be submitted along with the application. An aggrieved person may also file an application without an accompanying DIR. In such cases, the Court may direct the PO to record and submit a DIR, particularly if the application filed by the aggrieved person is inadequate in any manner.

- Option 2

The Protection Officer may file an application on behalf of the aggrieved person. The aggrieved person may approach the PO through any of the following means:

(i) An aggrieved person may directly approach the PO with a complaint of domestic violence and with the intention of filing an application under the PWDVA.

(ii) An aggrieved person may approach the police with a complaint of domestic violence. If, after receiving information from the police on her legal rights, the aggrieved person is desirous of filing an application for relief/s under the PWDVA, she will be referred to the PO for assistance in filing the application. The police may initiate criminal proceedings simultaneously, if the case warrants.

(iii) An aggrieved person may first approach a Service Provider. A SP may attempt counselling both parties to bring about a resolution or compromise. If no settlement is arrived at, the aggrieved person may be referred to the PO for filing an application.

Please note: As per the law, registered SPs may record a DIR. All SPs, whether registered or not, may also file an application on behalf of the aggrieved person.

(iv) An aggrieved person may approach either a shelter home or medical facility for services. These facilities may refer the aggrieved person to the PO for filing an application.

3 Role of the Protection Officer in Filing an Application in Court

The PO has a duty to assist an aggrieved person in preparing and filing an application for relief/s under the PWDVA, if the aggrieved person requires such assistance.[5] This duty extends to assistance in obtaining all types of orders from the Court whether final or interim.[6] Once an application is filed, the PO may request the Court to arrange legal aid for the aggrieved person or otherwise facilitate an aggrieved person's access to legal aid.[7]

4 General Aspects of Applications Filed in Court

4.1 Format for Filing Applications

Form II of the PWDVR provides the format for the application for relief/s under the PWDVA.[8] Generally, lawyers are required to draft applications to be submitted in Courts. However, Form II provides a simplified and straightforward version of such applications that can be completed directly by the aggrieved person, POs and others without legal qualifications. Form II elicits details of the alleged violence, the relief/s sought and other information necessary for a Court to assess the merits of the application.

An aggrieved person may seek the assistance of a PO in preparing the application

5 Section 9(1)(c) and Rule 8(1)(iii)
6 Rule 8(1)(iii)
7 Section 9(1)(d) and Rule 8(1)(v)
8 Rule 6(1)

and submitting it to the concerned Magistrate.[9] If the aggrieved person is illiterate, the PO is required to read the application aloud and explain its contents to the aggrieved person.

Although Form II is the preferable format, it is not the only acceptable format and information submitted in some other format may be acceptable to Courts as long as it includes details on the alleged violence and a prayer for relief/s. However, it is advisable that POs use Form II for filing applications in Court.

If the questions posed and the space provided in Form II do not allow for a sufficient recording of the particulars, separate sheets may be used. These sheets should be appended to the application submitted.

4.2 When Can an Application Be Filed?

Domestic violence often constitutes a cycle of acts manifested in various forms over the course of time. It can be subtle or overt. On occasion it may be difficult to isolate emotional harm from other kinds of violence faced by the aggrieved person. Though physical abuse may cease, its long-term emotional and psychological effect may remain.

Domestic violence can be regarded as "continuing violence". This is equivalent to the concept of "continuing offence": i.e., an offence that is not committed once and for all but, rather, continues over time. For example:

- The aggrieved person left her shared household due to emotional and physical abuse at the hands of her husband. She has been staying separately since 2004. The last incident of physical abuse occurred just before she left home. She can file an application for a residence order under the PWDVA, as she continues to be deprived of the shared household and was forced to leave her home as a result of domestic violence.
- An order for maintenance under Section 125 CrPC was passed in 2002 in favour of the aggrieved person against her husband. That order has still not been complied with. The fact that, to date, the husband has failed to maintain the aggrieved person and her children constitutes domestic violence and gives the woman the right to file for relief/s under the PWDVA, even though no fresh incident of domestic violence has been perpetrated by the respondent-husband after the coming into force of the Act.
- The aggrieved person is divorced from her husband and is living separately. Her former husband continues to threaten and stalk her. She can file for a protection order under the PWDVA because she "has been" in a domestic relationship with the ex-husband.

Thus, the law allows an aggrieved person to file an application for acts of domestic violence that took place before the enforcement of the PWDVA in 2006.[10]

For example, if a woman was dispossessed from the shared household in 2000 (i.e., before the PWDVA was brought into force), she can still claim a residence order under Section 17. Similarly, a woman denied maintenance for several years could make a claim

9 Rule 6(2)

10 In order to understand this, we must distinguish between criminal and civil laws and retrospective and retroactive laws. A criminal law that is retrospective in effect violates fundamental rights. For example: let us suppose that, in 2009, the state enacts a criminal law that penalises persons who construct houses that have more than five storeys. Those people who constructed houses with five or more storeys before 2009 did so before their act was deemed to be an offence. If the new law, with its penal provisions, is applied to these people who constructed their multi-storeyed houses before 2009, it could be struck down as violating fundamental rights. This issue does not arise with regard to the PWDVA as it is a civil law that grants relief/s (rather than a criminal law that penalises actions). The only penal provision in the PWDVA is Section 31, which penalises the breach of court orders. A court order can be breached only after it is granted. A court can grant an order only after the law was brought into effect. Hence, the issue of retrospective effect does not arise vis-à-vis the PWDVA.

of economic abuse under the PWDVA. A claim for compensation under Section 22 for pre-PWDVA domestic violence is also possible.

The Court may, however, consider issues such as acquiescence and waiver, delays, etc. whenever appropriate at the time of granting relief/s.

The PWDVA does not prescribe any time limit or limitation period within which an aggrieved person must bring her claim. An aggrieved person can, therefore, file an application for acts of domestic violence conducted in the past or even in the distant past. It is for the Court to decide upon the nature of relief/s if any, to be granted.

As per Section 26, if an aggrieved person is involved in litigation that affects her rights as well as the rights of the respondent, then an application for relief/s under the PWDVA can be filed in such pending proceedings. It is advisable for a PO to ascertain whether or not the aggrieved person is involved in any litigation and file the PWDVA application in the Court where that prior litigation is ongoing. This is to avoid a multiplicity of forums and proceedings. However, nothing bars an aggrieved person from filing a separate application under Section 12 of the PWDVA even if there are pending proceedings involving the parties. However, there is an absolute obligation on the aggrieved person to disclose in the application all pending and previous proceedings under any law between the parties in which she has claimed similar relief. Failure to do so will disentitle an aggrieved person from obtaining reliefs under the PWDVA.

Finally, due to the emotional upheavals associated with domestic violence, POs should anticipate that occasionally the aggrieved person will change her mind: first request assistance in filing an application and then decide not to file an application. Women in abusive relationships sometimes go through phases where the perpetrator offers professions of love, appeals for mercy and promises to change, resulting in the woman agreeing to give the man another chance, but in reality simply prolonging the abuse. The PWDVA does not debar an aggrieved person from making repeated applications, especially if there is a fresh incident of violence. A PO is advised to be patient in cases where aggrieved persons make repeated requests for assistance to file applications. It must be remembered that if the aggrieved person wishes to file an application in Court, it is the duty of the PO to assist her and facilitate her access to Courtmandated relief/s. The PO may simultaneously refer the aggrieved person to other available support services such as a counselling centre with a view to empowering her to make an informed decision about her life.

4.3 Where Can an Application Be Filed?

Section 27 provides that an application under the PWDVA can be filed before either a Judicial Magistrate of the first class or a Metropolitan Magistrate in urban areas within whose local limits any of the following situations arise:

(i) The aggrieved person resides either permanently or temporarily or carries on business or is employed.

If the aggrieved person has been dispossessed from the shared household, this provision allows her to file an application in the place where her natal home (in cases where the shared household was also the matrimonial home) or shelter home or any other residence is situated.

(ii) The respondent resides or carries on business or is employed.

This can allude to the shared household or any other place where the respondent is residing or is employed.

(iii) The cause of action has arisen.

The "cause of action" alludes to the acts of domestic violence that are alleged to have taken place.

By providing such a wide array of choices, the PWDVA allows an aggrieved person to file an application in a place which is entirely different from the place where the act of domestic violence is alleged to have occurred.

FORM II

[See rule 6(1)]

APPLICATION TO THE MAGISTRATE UNDER SECTION 12 OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 of 2005)

To

The Court of Magistrate

……………………………………

……………………………………

……………………………………

……………………………………

Fill in the name and address of the court

Application under section.........
of the Protection of Women
from Domestic Violence
Act, 2005 (43 of 2005)

]

Fill Section 12 in the blank space

SHOWETH:

1. That the application under section........ of Protection of Women from Domestic Violence Act, 2005 is being filed along with a copy of Domestic Incident Report by the:-

   (a) Aggrieved person ☐

   (b) Protection Officer ☐

   (c) Any other person on behalf of the aggrieved person ☐

(tick whichever is applicable)

5 Orders that May Be Sought from the Court

Item 2 of Form II broadly lists the orders available under the PWDVA; Item 3 details the specifics of each of these orders. Item 3(vii) also provides space to include "any other order that she may need but that is not mentioned in the Form.

FORM II, Item 2

It is prayed that the Hon'ble court may take cognizance of the complaint/Domestic Incident Report and pass all/any of the orders, as deemed necessary in the circumstances of the case,

(a) Pass protection orders under section 18 and/or

(b) Pass residence orders under section 19 and/or

(c) Direct the respondent to pay monetary relief under section 20 and/or

(d) Pass orders under section 21 of the Act and/or

(e) Direct the respondent to grant compensation or damages under section 22 and/or

(f) Pass such interim orders as the court deems just and proper;

(g) Pass any orders as deems fit in the circumstances of the case.

5.1 Protection Orders

A protection order is defined under Section 18 of the PWDVA. It is in the nature of a "stop violence" order aimed at:

(i) Putting an end to additional acts of violence by the respondent against the aggrieved person;

and

(ii) Preventing acts that adversely impact on the aggrieved person's rights as recognized under the law.

A court may grant any of the orders mentioned in Section 18 to:

(a) Prevent the commission of further acts of domestic violence, including orders to prevent the respondent from aiding and abetting the commission of acts of domestic violence.

(b) Prevent the respondent from entering the aggrieved person's place of employment or education and causing harassment.

(c) Prevent the respondent from communicating with the aggrieved person in any manner.

(d) Prevent the respondents from taking any financial action to the aggrieved person's detriment.

(e) Prevent any violence being caused to a person related to or dependent on the aggrieved person.

Item 3(i) of Form II lists specific orders that an aggrieved person may seek from the Court.

FORM II, Item 3(i)

Order required:

(i) Protection Order under section 18

- Prohibiting acts of domestic violence by granting an injunction against the Respondents from repeating any of the acts mentioned in terms of column 4(a)/(b)/(c)/(d)/(e)/(f)/(g) of the application
- Prohibiting Respondent(s) from entering the school/college/workplace
- Prohibiting from stopping you from going to your place of employment
- Prohibiting Respondent(s) from entering the school/college/any other place of your children
- Prohibiting from stopping you from going to your school
- Prohibiting any form of communication by the Respondent with you
- Prohibiting alienation of assets by the Respondent
- Prohibiting operation of joint bank lockers/accounts by the Respondent and allowing the aggrieved person to operate the same
- Directing the Respondent to stay away from the dependants/relatives/any other person of the aggrieved person to prohibit violence against them
- Any other order, please specify

Domestic violence manifests in different ways and it is not possible to list all possible types of protection orders in Form II. Instead, the PWDVA vests wide powers with the Magistrate to grant orders designed to prohibit specific acts of violence from being committed.[11] Hence, if the listing provided in Form II, Item 3(i) does not include the exact nature of the order that the aggrieved person requires, then the space provided for "any other order" should be used to supply details. The attempt should be to seek orders that correspond to the particular acts of violence from which the aggrieved person requires protection.

For instance, a Magistrate has the power to grant the following kinds of protection orders, in addition to those enlisted in Item 3(i)

- Prohibit the respondent(s) from talking to the aggrieved person about marriage or forcing her to meet a particular person for marriage, as for example, when the aggrieved person's parents are pressuring her to get married against her will.
- Direct the respondent(s) to restore possession of the aggrieved person's stridhan, jewellery or clothes.[12]
- Direct the respondent(s) to surrender and/or refrain from acquiring firearms, other weapons or any dangerous substances.
- Prohibit the respondent(s) from consuming alcohol or illegal drugs, particularly if alcohol or drug use contributed to the domestic violence.

Finally, it must be remembered that a protection order can be sought not only to

11 Section 18(g) empowers the Magistrate to grant a protection order to prohibit the respondent from "committing any other act as specified in the protection order".

12 Section 19(8). In the proposed law submitted by LCWRI to the Government of India, Section 19 was actually a sub-section of Section 18. Due to an inadvertent error, two separate provisions instead of just one made their way into the final Act. This has led to much confusion in the implementation of the Act.

address and remedy acts of violence that have occurred, but also to address threats of domestic violence.

5.2 Residence Orders

5.2.1 Background: The Right to Reside

Section 17 of the PWDVA recognizes a woman's right to reside in a shared household. Prior to the enactment of the PWDVA, the right to reside vested in those who held the right, title over or interest in the property. For instance, if the father owned the shared household or if the lease of a shared household was in his name, then he had the right to reside in the shared household. He could then allow other dependents to reside in the shared household with him. In most instances, it is the male head of the family who holds the title or ownership over or interest in the property. Therefore, in effect, women had no right to reside in their homes, as they generally do not hold the title over property or have adequate or equal property rights.

As a result, the forced dispossession of women from the shared household was fairly common, particularly as a consequence of domestic violence. In fact, a tenant or an illegal occupant had better safeguards for residence than did women, as the former could be dispossessed only after obtaining an eviction order from the court. By recognizing a woman's right to reside in the shared household, the PWDVA guards against her illegal dispossession. Section 17(2) specifies that women in domestic relationships cannot be dispossessed from any part of the shared household, except in accordance with procedure established under law. [13]

In order better to understand Section 17(2), it is important to distinguish the right to reside recognised in Section 17(1) from property rights. All that the PWDVA does is to provide a procedural safeguard against dispossession to women; it does not create any substantive rights over the property. What this means is that a woman cannot be dispossessed from the household that she shares with the perpetrator of violence as a result of violence. If she is to be dispossessed, then the procedure set out in law has to be followed,[14] which will vary according to the nature of ownership or title over the property.[15]

Saying that no substantive rights are created means that the right to reside under the PWDVA does not affect the existing ownership structure established under existing property laws. A woman facing domestic violence can exercise her right to reside in the shared household, but this does not mean that she is entitled to seek a share of ownership in the property in her application under the PWDVA. Issues of ownership are determined on the basis of applicable property laws in a separate civil court.[16]

Not only does the PWDVA provide a right of residence, it also creates mechanisms by which that right can be meaningfully exercised by women. Residence orders and protection

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13 The PWDVA puts into legislation a right that has previously been recognised in case law on maintenance rights of wives. In B.P. Achala Anand [(2005) 3 SCC 313], the Supreme Court stated, "A Hindu woman is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to a separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for just cause she is compelled to live apart from him. The right to residence is part and parcel of the wife's right to maintenance." See also Ruma Charaborty v Sudha Rani Banerjee [(2005) 8 SCC 140].

14 For instance, if the shared household constitutes tenanted premises, the landlord may protect his interests by initiating proceedings for eviction following the procedure established under rent laws. The woman will have the right to defend the proceedings in view of her right to reside, even if the premises are not tenanted in her name.

15 Property laws and procedure may vary from state to state as this is a state subject.

16 If the aggrieved person is involved in litigation on property matters that affects the rights of both parties, (i.e. the aggrieved person and the respondent), then, as per Section 26, she can file an application for relief/s under the PWDVA in those pending proceedings.

orders, for example, are both available to assure the aggrieved person of a home without fear of additional violence or destitution.

5.2.2 Residence Orders: Specific Details

A Residence order may be sought in cases where the aggrieved person apprehends dispossession from the shared household or in cases where she is already dispossessed and seeks to be restored to the shared household.

A Residence order is granted on the basis of Section 17(1) of the PWDVA, which recognizes a woman's right to reside in the shared household irrespective of whether she has a right, title or ownership in the shared household. This means that there is no need for an aggrieved person to provide evidence of her right or interest in the shared household. All that an aggrieved person must provide is evidence of the domestic relationship and that the premises over which the Residence order is sought is the shared household.[17]

The kinds of Residence orders that an aggrieved person may seek are provided in Section 19(1) of the PWDVA and further detailed in Form II, Item (3)(ii) of the PWDVR. Sub-sections (2)-(8) of Section 19 provide for other orders that can be granted by Magistrates to ensure that residence and protection orders are enforced.

Residence orders enlisted under Section 19 are aimed towards ensuring an aggrieved person's peaceful possession of the premises. In this regard, the aggrieved person may seek orders to:

- Restrain the respondent from committing any acts that interfere with the aggrieved person's peaceful possession of the shared household.[18]
- Prevent the respondent from dispossessing the aggrieved person from the shared household or any portion thereof.[19]
- Prohibit the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides.[20]
- Prohibit the respondent from committing any acts to defeat a woman's right to reside, such as alienating or selling off the shared household, renouncing his own share in the shared household, etc. [21]
- Direct the respondent to leave the shared household.[22] The Proviso to Section 19(1) states that this order cannot be passed against any person who is a woman.[23] Hence this order cannot be sought against any female respondent. However, female respondents may be prevented from entering any portion of the shared household in which the aggrieved person resides.[24]
- Though this order is not specifically enlisted, an aggrieved person may seek an order for her restoration to the shared household, in case she has already been dispossessed. The Magistrate's power to grant this order is derived from the right to reside recognised in Section 17(1).
- In case the aggrieved person is apprehensive of further acts of violence being

17 For further details on the documentation required, see Chapter How to Record a Domestic Incident Report
18 Section 19(1)(a). If a woman resides in the matrimonial home, she has a better chance of succeeding in her demand for shelter and a right to stay in the same house.
19 Ibid.
20 Section 19 (1)(c)
21 Section 19 (1)(d)-(e)
22 Section 19 (1)(b)
23 The proviso to Section 19(1) says, "provided that no order under clause [19(1)] (b) shall be passed against any person who is a woman."
24 See footnote 15 above

committed on her return to the shared household, she may seek a direction ordering the respondent to provide her with suitable alternate accommodation.[25] If the aggrieved person has identified a suitable accommodation, then the respondent can be directed to pay the rent of such alternate accommodation. According to Section 19 (1)(f), the accommodation granted under such an order has to be at the "same level…as enjoyed by her in the shared household..."

FORM II, Item 3(ii)

(ii) Residence Order under section 19

- An order restraining Respondent(s) from
- Dispossessing or throwing me out from the shared household
- Entering that portion of the shared household in which I reside
- Alienating/disposing/encumbering the shared household
- Renouncing his rights in the shared household
- An order entitling me continued access to my personal effects
- An order directing Respondent(s) to
- Remove himself from the shared household
- Secure same level of alternate accommodation or pay rent for the same
- Any other order, please specify [ ]

If the orders enlisted in Form II, Item (3)(ii) do not reflect the exact kind of order that the aggrieved person requires, then the specific nature of the order sought should be provided under the heading "any other order". It is advisable to be as specific as possible in this request. For example, the aggrieved person may seek to restrain the respondent from throwing garbage on the portion of the shared household in which the aggrieved person resides.

Can a divorced woman ask for a residence order in the shared household of her ex-husband?

A divorced woman victimised by domestic violence is generally not entitled to reside in the shared household of her ex-husband.

In B.P. Achala Anand v. Appi Reddy & Anr. [(2005) 3 SCC 313] and Ruma Chakraborty v. Sudha Rani Banerjee & Anr. [(2005) 8 SCC 140], the Supreme Court held that because divorce is a termination of the matrimonial relationship, the right to residence depends upon the terms and conditions within the decree of divorce. Accordingly, a divorced woman can enforce the right to reside only if she has not expressly waived or compromised that right in her decree of divorce in appropriate proceedings under divorce laws. Absent a provision in the divorce decree allowing it, a divorced woman is not entitled to return to the former shared household. However, if she has not expressly forfeited or given up her right to post-divorce alimony, she can claim a right to reside in appropriate proceedings.

5.3 Additional Orders that Can Be Sought to Ensure the Enforcement of Protection and Residence Orders

The remaining provisions of Section 19, i.e. sub-sections (2)-(8), are useful directives that can be sought to ensure that residence and protection prders are enforced. The

25 Section 19(1)(f)

Magistrate is empowered to grant any of these orders in addition to any order granted under Sections 18 and 19(1). The aggrieved person may seek these orders at the time of completing Form II under the heading "any other order" in Items 3(i) and (ii).

- Section 19(2): The Magistrate may impose additional conditions or give specific directions to protect or provide for the safety of the aggrieved person. For example: an order to the police to guard the shared household and prevent the respondent from entering, in addition to an order granted under Section 19(1)(b).
- Section 19(3) and (4): The Magistrate may direct the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. The execution of a bond is equivalent to providing "security for keeping peace and for good behaviour" prescribed in Chapter VIII of the CrPC. The breach of the conditions mentioned in the bond is a punishable offence.
- Section 19(5) and (7): The Magistrate may direct the police to give protection to the aggrieved person or to assist her in the implementation of the protection or residence order granted.
- Section 19(6): The Magistrate may, in addition to a residence order, impose obligations on the respondent to pay rent or meet other financial obligations.
- Section 19(8): The Magistrate may compel the respondent to return to the aggrieved person her stridhan or any other property to which she may be entitled.

5.4 Regaining Possession of Stridhan

Stridhan refers to gifts given to a woman at the time of her marriage; for example: clothes, ornaments, jewellery, household items, cash, etc.[26] The woman is the absolute owner of stridhan and can deal with it in any manner she likes. She may sell it, gift it, spend it or dispose of it in any manner she likes without any reference, consultation or permission of her husband. Only in situations of extreme distress may the husband use this property, and even here he is morally bound to restore the property or its value to the woman as soon as possible.[27]

In situations of domestic violence, it is likely that women will leave their stridhan in the matrimonial home, in the custody of either the husband or his relatives. In such cases, an aggrieved person can seek a direction from the Court for the retrieval of her stridhan. This direction may be sought while seeking a protection or residence order in Form II.

In order to demonstrate that the items to be retrieved are part of stridhan, the following documentation, if available, can be relied upon:

(i) A copy of the list of gifts and items received during marriage. In a Muslim marriage, such a list is often made during the nikah ceremony.

(ii) Bills of stridhan items, photographs of the aggrieved person wearing the jewellery or of her using the items, etc.

If the aggrieved person does not have a list of her stridhan, she should try to recollect and prepare a list the items received as stridhan. If the items are kept in a locker, then bank details must be provided such as the name of the bank, locker number, etc.

If the respondent agrees to return stridhan, then items so returned must be recorded

26 In Pratibha Rani v. Suraj Kumar [(1985) 2 SCC 370], the Supreme Court identified stridhan as: "'Stridhan' or Saudayika means the gift of affectionate kindred and includes both Yautaka or gifts received at the time of marriage, as well as Ayautaka. Manu enumerates six kinds of stridhan: (i) Gifts made before the fire at the time of marriage; (ii) Gifts made at the bridal procession; (iii) Gifts made in token of love by her father-in-law and mother-in-law and those made at the time of making obeisance at the feet of elders; (iv) Gifts made by father; (v) Gifts made by mother; (vi) Gifts made by brother"

27 Pratibha Rani v. Suraj Kumar, Ibid.

and maintained in a list. Details of the person paying for the conveyance used to return stridhan and the method of conveyance used should also be recorded.

If, for any reason, the respondent refuses to return stridhan items, a complaint under Section 406 of the IPC may be recorded and police assistance may be sought to retrieve the items. For this purpose, an NCR may be recorded stating the date that the aggrieved person left her matrimonial home and the items taken from and left behind at that time.

5.5 Monetary Orders

Section 20 of the PWDVA provides for monetary orders. The aim of this provision is to ensure that women facing domestic violence have adequate financial support and are not rendered vulnerable due to their financial dependence on male members of the family.

The relief/s available under this provision can broadly be divided into two:

(i) Payment for losses and expenses incurred as a consequence of domestic violence; provided for in Form II, Item (3)(iii).

(ii) Payment for maintenance to meet daily needs and expenses of the aggrieved person and her children; provided for in Form II, Item (3)(iv).

FORM II, Item 3(iii)-(iv)

(iii) Monetary reliefs under section 20

- Loss of earnings, Amount claimed
- Medical expenses, Amount claimed [ ]
- Loss due to destruction/damage or removal of property from the control of the aggrieved person,

  Amount claimed [ ]
- Any other loss or physical or mental injury as specified in clause 10(d)

  Amount claimed [ ]

  Total amount claimed [ ]

Any other order, please specify

(iv) Monetary reliefs under section 20

- Directing the Respondent to pay the following expenses as monetary relief:
- Food, clothes, medications and other basic necessities, Amount

  [ ] per month
- School fees and related expenses Amount [ ] per month
- Household expenses Amount [ ] per month
- Any other expenses Amount [ ] per month

  Total [ ] per month
- Any other order, please specify

5.5.1 Payment for Losses and Expenses Incurred as a Consequence of Domestic Violence

Under this category, the aggrieved person may seek orders directing the respondent to pay for:

(i) Loss of earnings due to domestic violence. This is particularly relevant for daily wage workers or those working on daily rates.

(ii) Medical expenses incurred to treat injuries sustained as a result of domestic violence, which includes treatment for both physical and mental injuries. For example: fees paid to physicians and mental health professionals.

(iii) Loss of property.

(iv) Any other loss sustained as a result of domestic violence.

The orders for payment under this category are based on actual expenditure incurred. Therefore, in order to strengthen these claims for relief, it is advisable to include work certificates, medical certificates, bills, etc. to the application.

Further, orders under this category are available to all aggrieved persons and are not limited to those in matrimonial relationships.

5.5.2 Maintenance

Section 20(1)(d) of the PWDVA provides that the Court may order the respondent to pay maintenance to the aggrieved person and to her children. This can be paid as a lump sum amount or in instalments.

The right to maintenance of wives and other dependents is also recognized under various Personal Laws. Section 125 of the CrPC obligates a person to maintain his wife, including a divorced wife who is not remarried; children, whether legitimate or illegitimate; and parents who are unable to maintain themselves.[28] Section 20(1)(d) of the PWDVA specifies that the amount of maintenance granted can be in addition to the amount received on an order under any of these other laws. Hence, the ambit of Section 20(1)(d) is broader than the provisions contained in any of these other laws. This means, for instance, that sisters and unmarried daughters may claim maintenance from their brothers or fathers respectively. Aggrieved persons who are in relationships that are in the nature of marriage can also claim maintenance under this provision.

Maintenance may include provision for food, clothing, residence, education of children, medical attendance or treatment.[29] The principles followed under Section 125 CrPC in determining maintenance amounts may be used for determining the amount of maintenance under Section 20(1)(d).

5.5.3 Quantum of Monetary Relief

Section 20(2) of the PWDVA states that monetary relief under both categories – i.e. payment for loss and payment for maintenance – has to be "adequate, fair, reasonable and consistent with the standard of living to which the aggrieved person is accustomed" [emphasis added].[30] It is, therefore, important to submit a claim that is based on a realistic assessment of the respondent's income and standard of living.

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28 28 Section 125 CrPC requires a person to pay monthly maintenance if:
- His wife is unable to maintain herself. For the purposes of this section, "wife" includes a divorced wife who has not remarried.
- He has a legitimate or illegitimate minor child.
- He has a legitimate or illegitimate disabled major child, not being a married daughter.
- His father or mother is unable to maintain himself or herself; and if the person has sufficient means but neglects or refuses to maintain his father or mother.

29 State of Haryana v Smt Santra [(2000) 5 SCC 182]

30 In Jasbir Kaur Sehgal v Dist. Judge Dehradun [(1997) 7 SCC 7], the Supreme Court opined, "no set formula can be laid down for fixing the amount of maintenance. It has in the very nature of things to depend on the facts and circumstances of each case. The amount of maintenance fixed for the wife should be such as she can live in reasonable comfort and the mode of life she was used to when she lived with her husband and also that she does not feel handicapped in the prosecution of her case."

The following documents may be useful to demonstrate the respondent's standard of living:

- Pay slip of the respondent
- Income tax and other tax returns
- Bank statements and papers
- Title deeds of property owned by the respondent
- Shares/bond certificates
- Receipts of any other asset purchases or documents related to capital acquisition.

These documents may be useful to demonstrate the standard of living and lifestyle of the respondent and the aggrieved person. In case an aggrieved person is not able to produce any papers as evidence, she can seek an order under Rule 10(1)(b) for directions to the Protection Officer to conduct an inquiry into financial assets. Please note: a PO cannot conduct such enquiries without an express order from the Court.

It is advisable for the aggrieved person to seek a lump sum amount instead of monthly instalments to prevent hardship if the perpetrator defaults.

5.6 Custody Orders

Section 21 provides for the grant of temporary custody[31] of children to the aggrieved woman (or to the person who has applied on their behalf) at the time of granting protection orders.[32] The underlying rationale is twofold: to protect the children and to ensure that they are not used as pawns to coerce the woman to stay in a violent domestic relationship. It is important to emphasize that custody orders under the PWDVA are only temporary in nature and that issues of permanent custody have to be decided in accordance with provisions of the Personal Law applicable to the aggrieved person or the Guardianship and Wards Act.

FORM II, Item 3(v)

(v) Custody Order under Section 21

Direct the Respondent to hand over the custody of the child or children to the –

• Aggrieved Person • Any other person on her behalf, details of such person [ ]

In making custody decisions, the Court will be guided by considerations of what is in the best interest of the child. In assessing best interest, the Court will consider the following:

- Who would have better care and consideration for the welfare of the child;
- Where is the child more likely to be happy;
- By whom the mental and physical development and comfort of the child can be better looked after;
- Who has the desire, determination, concept and capacity to provide for better education and round-the-clock nursing of the child; and
- Who would be available by the side of the child when the child needs love and affection, care, counselling and protection.

31 The term custody should not be confused with the term guardianship. "Custody" pertains to the child's physical placement. "Guardianship" pertains to all aspects of access, custody and care of the child and/or its property.

32 The use of the term "at the time of granting protection orders" in Section 21 means that an order for temporary custody cannot be claimed by itself. However, separating a woman from her children may be regarded as a form of emotional abuse and blackmail. Hence, at the time of claiming an order for temporary custody, it is advisable to also claim a protection order to stop violence from being committed.

Material considerations, though important, are secondary to issues of stability, security, compassion, guidance and any other factors "essential for the full development of the child's own character, personality and talents".[33] Hence, it is not necessary for the aggrieved person to demonstrate that she has the financial capacity to look after the child. However, she may be called upon to demonstrate that awarding her custody shall be in her child's best interest.

At the time of granting temporary custody orders, the Court may specify conditions under which the respondent may visit the children.

5.7 Compensation Orders

Section 22 of the PWDVA provides for compensation orders for injuries sustained as a result of acts of domestic violence. Injuries may include mental torture and emotional distress. A compensation order is over and above all other orders granted under the PWDVA. The distinction between an order for monetary relief and a compensation order is that the former is intended to meet actual expenditure incurred whereas the latter is meant to compensate for injuries caused to the aggrieved person above and beyond the actual loss or expenditure.

FORM II (3) (vi)

(vi) Compensation order under section 22

A compensation order may be applied for in addition to any other claim/s for damages under civil law. Amounts granted by the Courts in other proceedings must be disclosed in the application under the PWDVA. Such amounts shall then be deducted from the compensation order granted by the Court.

In her application, the aggrieved person needs only to indicate that she requires a compensation order. The amount of compensation is determined by the Court after assessing the facts and circumstances of the case and the extent of injuries sustained.

Finally, if the orders enlisted in Form II do not meet with the aggrieved person's requirements, then the space provided in Form II, Item (3)(vii) can be used to seek specific orders.

6 Other Details to Be Completed in Form II

Item 4 of Form II pertain to details on other litigation proceedings and their outcomes.

FORM II, Item 4

4. Details of previous litigation, if any

(a)
- Under the Indian Penal Code, sections ……………………………………… Pending in the Court of [ ]
- Disposed of, details of relief [ ]

(b)
- Under Cr.P.C., section …………… Pending in the court of [ ]
- Disposed of, details of relief [ ]

(c)
- Under the Hindu Marriage Act, 1956, sections ………………………….. Pending in the court of [ ]

33 Dhanwanti Joshi v. Madhav Unde [1998 (1) SCC 112]: "Welfare is an all encompassing word. It includes material welfare both in the sense of adequacy of resources to provide a pleasant home and a comfortable standard of living and in the sense of adequacy of care to ensure that good health and due personal pride are maintained. However while material considerations have their place, they are secondary matters. More important are the stability and the security, the loving and understanding care and guidance, the warm and compassionate relationships that are essential for the full development of the child's own character, personality and talents." [Emphasis added]

FORM II, Item 4 (con't.)

- Disposed of, details of relief [ ]

(d)
- Under the Hindu Adoptions and Maintenance Act, 1956, sections …………………. Pending in the court of [ ]
- Disposed of, details of relief [ ]

(e)
- Application for maintenance, under section………… under [ ] Act
- Interim maintenance Rs. [ ] p.m.
- Maintenance granted Rs. [ ] p.m.

(f)
- Whether Respondent was sent to Judicial Custody.
- For less than a week
- For less than a month
- For more than a month

  Specify period [ ]

(g) Any other order [ ]

The need to provide these details is based on Section 36 of the PWDVA which provides that the PWDVA can be used in addition to any other law. Even if an aggrieved person has pending litigation under other laws, she can initiate separate proceedings under the PWDVA for relief/s. However, at the time of her PWDVA application, she must mention the other proceedings in which she may be involved. Failure to disclose details of previous and pending proceedings may lead to the dismissal of the application on the ground that the aggrieved person has not approached the court with "clean hands".

Item 4 of Form II provides space for recording details of pending and disposed of proceedings in which the aggrieved person is or had been involved. The written pleadings submitted in such proceedings can be consulted to complete details required under this Item.[34] If the matter has been disposed of, it is important to mention details of the order that was granted. It is also advisable that the aggrieved person append to her PWDVA application a copy of the orders granted in the other proceedings, if she has such a copy available.

Item 4(f) is significant. Details of the respondent's prior history of incarceration may be useful in proving proclivity towards and past episodes of violence.

Form II ends with prayers to the Court to issue appropriate orders and provides a verification of the details completed in the Form.

In cases where the Protection Officer assists the aggrieved person in completing Form II, her signature (or thumb impression, if she is illiterate) is required in two places, as shown in the box below. The aggrieved person's signature/thumb impression indicates that she agrees with the contents of the Form. Before obtaining the aggrieved person's signature, it is advisable that the PO read out the contents of Form II to her and make sure that she agrees with it.

The term "deponent" used in the portion on verification denotes the aggrieved person or the person making the statements. The verification must be counter-signed by the Protection Officer.

34 All written pleadings submitted in Court indicate the relevant provision under which the petition is filed in the heading.

Prayer:

It is, therefore, most respectfully prayed that this Hon'ble Court be pleased to grant the relief (s) claimed therein and pass such order or orders other order as this Hon'ble Court may deem fit and proper under the given facts and circumstances of the case for protecting the aggrieved person from domestic violence and in the interest of justice.

Place: Complainant/Aggrieved person through

Dated:

Counsel Aggrieved
Person to sign

VERIFICATION

Verified at..............................place) on this day of...........................that the contents of paras 1 to 12 of the above application are true and correct to the best of my knowledge and nothing material has been concealed therefrom.

Deponent

Countersignature of Protection Officer with date.

7 How to Obtain Interim Orders

The PWDVA provides civil reliefs that are primarily injunctive (preventive) in nature. Interim and ex parte orders, being immediate and emergency injunctions, are very important in preventing domestic violence and irreparable harm[35] being caused to the aggrieved person. Interim orders should be granted in those cases where, if they are not granted, the purpose of filing the application will be defeated. The provision for such orders is contained in Section 23 of the PWDVA.

An interim order may be sought at the time of filing the application or at any time during the course of the proceedings. Interim orders are granted pursuant to affidavits submitted in support of the application. Although it is not a matter of right, interim orders can be granted solely on the basis of affidavits, as long as the affidavits provide sufficient details. It is important to note that written interim orders can be passed on the basis of affidavits and oral arguments.

An ex parte order is one that is granted without prior notice to the respondent or in the absence of the respondent. Ex parte orders may be granted when the aggrieved person's application prima facie[36] shows that the respondent is committing or there is a likelihood of his committing domestic violence. These orders may also be granted when

35 "Irreparable harm" or damage is any injury that cannot be monetarily compensated.

36 A prima facie case is one in which there is a bona fide contention between the parties or a serious question to be tried and this contention/question is evident on the "face of it": i.e., evident from the facts related in the affidavit or in any other written submission.

the respondent fails or refuses to appear in Court despite written notice being served.[37] Ex parte orders can be either interim or final in nature.

The format of an affidavit required for seeking interim orders is provided in Form III reproduced below.[38] Form III should contain adequate and accurate details of the domestic violence apprehended.

The affidavit in Form III serves two purposes. First, it supports the application filed in Form II, as the word "affidavit" means a statement on oath or a declaration of certain facts to whose truthfulness the aggrieved person is willing to swear. Second, it allows space for the aggrieved person to seek interim orders that are needed immediately to prevent apprehended domestic violence or address domestic violence already faced.

Most of the information sought in Form III is a repetition of statements made in Form II. However, the following aspects that must be borne in mind while completing Form III:

(i) Form III must be submitted in the same Court as the application.

(ii) The details provided in Form III should be in consonance with statements made in Forms I and II.

(iii) Under Item 2 of Form III, the aggrieved person, if she is the mother of the children, can put her own name as the natural guardian of minor children.[39]

(iv) Item 9 of Form III is very significant in seeking Interim Orders. In this space actual and apprehended fears of domestic violence should be accurately recorded, along with details of the specific nature of violence apprehended, such as verbal and non-verbal threats, threatening behaviour, prior conduct that leads to the apprehension of further acts of violence being committed.

FORM III

(See rule 6(4) and 7]

AFFIDAVIT UNDER SECTION 23 (2) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

IN THE COURT OF................................, MM, ...

P/S:...............................

IN THE MATTER OF:

Ms. .... & Others ...COMPLAINANT

VERSUS

Ms. .... & Others ...RESPONDENT

AFDAVIT

I, ..., W/o Mr. ...., R/0... D/o Mr. .... R/o.., presently residing at ....do hereby solemnly affirm and declare on oath as under:

37 For details on the service of notice, see Chapter "Duties of the Protection Officer During and Post-Litigation

38 Rule 6(4) and Rule 7

39 The Hindu Minority and Guardianship Act states that the "natural guardianship" of a minor vests with the father and, after him, the mother. Prior to the Githa Hariharan case [(1999) 2 SCC], this provision was interpreted to mean that the mother would be the natural guardian only after the lifetime of the father. This interpretation was rejected by the Supreme Court which held that the phrase "after him" as used in the statute, did not necessarily mean after the death of the father, but would include circumstances where the father was indisposed or incapable of being the natural guardian. A father who allegedly perpetrates violence on his children cannot be deemed capable of being a natural guardian.

1. That I am the Applicant in the accompanying Application for .... filed for myself and for my daughter/son.
2. That I am the natural guardian of...
3. That being conversant with the facts and circumstances of the case I am competent to swear this affidavit.
4. That the Deponent had been living with the Respondent/s at .... since...to..
5. That the details provided in the present application for the grant of relief under section (s)...............................have been entered into by me/at my instructions.
6. That the contents of the application have been read over, explained to me in English/ Hindi/any other local language (Please specify...)
7. That the contents to the said application may be read as part of this affidavit and are not repeated herein for the sake of brevity.
8. That the applicant apprehends repetition of the acts of domestic violence by the Respondent(s) against which relief is sought in the accompanying application.
9. That the Respondent has threatened the Applicant that ....

   ....

   ....

   ....

   ....
10. That the reliefs claimed in the accompanying application are urgent in as much as the applicant would face great financial hardship and would be forced to live under threat of repetition/escalation of acts sof domestic violence complained of in the accompanying application by the Respondent(s) if the said reliefs are not granted on an ex-parte adinterim basis.
11. That the facts mentioned herein are true and correct to the best of my knowledge and belief and nothing material has been concealed therefrom.

DEPONENT

VERIFICATION

Verified at..........................on this..........................day of............................. 20.......... That the contents of the above affidavit are correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed threfrom.

DEPONENT

❑❑❑

Duties of the Protection Officer During and Post-Litigation

Once an application under the PWDVA is filed in Court, the Protection Officer has to perform his/her duties under the Court's supervision. Chapter 8 provides details on the PO's duties that arise during the course of litigation and after the Court grants an order under the PWDVA.

Chapter Outline

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1 Service of Notice

Once an application under the PWDVA is filed in Court, a notice is issued to or "served upon" the respondent to appear in Court and respond to the allegations made in the application. The respondent's attendance in Court provides him/her the opportunity of a fair hearing prior to the grant of any orders against him.[1]

Section 13(1) vests the responsibility of serving notice, by the means prescribed

1 An interim ex parte Order can be granted under the PWDVA under the following conditions:
(i) If the application and the affidavit make out a prima facie case of domestic violence
and
(ii) The respondent either wilfully refuses to accept notice or refuses to attend Court after notice has been served.
A final order on an ex parte basis can also be granted if the respondent fails to appear in Court after notice is served. An ex parte order can be altered, modified or revoked if the respondent makes an application under Section 25(2). For further details on alteration, modification, revocation and appeals, see Part 4.

in Rule 12, on the Protection Officer. Once notice is served upon the respondent, the PO has to make a declaration in Court of service of notice. The declaration made by the PO is deemed to be proof that notice has been served upon the respondent.[2]

1.1 Time Limit for Serving Notice

Section 12(4) obligates the Court to fix the first date of hearing: ordinarily within three days of the Court's receipt of an application under Section 12. After fixing the date of hearing, the Court shall give notice of the hearing to the PO.[3] According to Section 13(1), notice has to be served not later than two days from the date on which it received by the PO.

However, under certain circumstances, the Court can extend the date of hearing to such further reasonable time as it deems fit. For instance, the Court may extend the notice period if the respondent does not live in the same city or if the respondent's whereabouts are unknown. However, in keeping with the intent of the PWDVA of providing much needed immediate relief in cases of domestic violence, the time period cannot be extended to a degree that defeats the rights of the aggrieved person.

1.2 Format to Be Used for Serving Notice

The Court may use Form VII provided in the PWDVR to issue notice. Form VII provides details of the parties to the proceedings, the provision under which the application is filed and the date and time of the hearing.

As with all Forms under the PWDVR, it is not mandatory that Form VII be used in all cases. Hence, the Court may use any other format to issue notice.

FORM VII

[See rule 11(1)]

NOTICE FOR APPEARANCE UNDER SECTION 13(1) OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

IN THE COURT OF.....................................

P/S:................................

IN THE MATTER OF:

Ms. ....COMPLAINANT

VERSUS

Ms. .... RESPONDENT

To,

Mr...

S/o..

R/o..

....

....

WHEREAS the Petitioner has filed an application(s) under section.. of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005);

You are hereby directed to appear before this Court on the..........................day of...........

2 Section 13(2)

3 Section 13(1)

..20.............. at.................... O' clock in the.................................noon personally or through a duly authorised counsel of this Court to show cause why the relief(s) claimed by the Applicant against you should not be granted, failing which the court shall proceed ex parte against you.

Given under my hand and the seal of the Court of.........................on the.................day of...........20..........

Seal of the Court Signature

At the time of receiving the notice from the Court, it is advisable that the PO check the following details:

(i) The complete name and address of both parties and any other details that facilitate the identification of the parties.[4]

(ii) It is useful to obtain addresses of the respondent's residence as well as his place of employment as notice can be served in either of these two places.[5]

  (i) A copy of the application and the DIR should be attached to the notice. A reading of both these documents shall provide details on the nature of violence alleged and the relief/s sought.

1.3 Serving Notice and Proof Thereof

As mentioned earlier, the duty of ensuring that notice has been served within the prescribed time period vests on the PO. However, the PO need not serve the notice personally. Section 13(1) specifies that the PO "shall get [the notice] served" on the respondent. This indicates that a PO may direct any other qualified person to effectuate service on his/her behalf. This interpretation is borne out by Rule 12(2)(a) which provides that the PO may direct "any other person" to serve notice on his/her behalf.

Simply put, Section 13(1) and Rule 12(2)(a) read together allow a PO to delegate the duty of service of notice. For example, a PO may delegate this duty to any office staff available to him/her. If office staff is unavailable, then the PO can solicit assistance from the police or the Court's Process Server.

In Practice

- In Karnataka, a messenger has been assigned to every Protection Officer. The PO delegates the task of serving notice to the messenger and is, therefore, in a position to verify service without having to physically deliver the notice himself/herself.
- In Andhra Pradesh and Chandigarh, POs delegate the function of serving notices to the Home Guards and ICDS attendants.
- In Tamil Nadu and Kerala, some POs delegate the service of notice to Service Providers.

[Source: Staying Alive: 2nd Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act (2005); Lawyers Collective (Women's Rights Initiative)]

However, even if a PO does not serve notice personally, she/he must supervise

4 Rule 12(1)

5 Rule 12(2)(a)

the service of notice and satisfy her/himself that notice has been served. Once the PO is satisfied that notice has been served, she/he will have to make a declaration in Court to that effect.[6] The PO's declaration of service of notice shall be proof that such notice was served upon the respondent or any other person as directed by the Magistrate.[7]

Alternatively, the Court, under its wide powers,[8] may use general procedure under the CPC[9] and the CrPC[10] for serving notice: i.e., through either the Process Server attached to the Court[11] or the police.[12] For this, the Court may directly issue appropriate orders to the Process Server or the police. The PO may also request the Court to issue such orders.

Police assistance is essential in those cases where the PO apprehends violence from the respondent and/or his family at the time of serving notice. In such cases, the PO may seek a Court order directing the police to serve notice upon the respondent. Even in cases where violence is not apprehended, the PO can seek a Court order directing the police or Process Server to provide assistance at the time of serving notice.

In those cases where the Court directs any other authority to serve notice, the responsibility of ensuring the service of notice shifts to such authority who will then report to the Court once service is completed. For instance, if the police are directed to serve notice in accordance with the CrPC, proof of service shall come from the police.

Rule 12(3) provides that the PO or any other person authorised to serve notices (i.e., any other authority directed by the Court), may take the following actions to demonstrate that notice has been effected:

- Make a statement on the date fixed for the appearance of the respondent

or

- Submit a report to the Court that service has been effected.

In Practice

Following a reported incident where a Protection Officer was subjected to violence by the respondent and his family at the time of serving notice, the Delhi High Court, acting on a request made by the Department of Social Welfare, Government of Delhi, issued the following order to be followed by all Courts while dealing with cases under the PWDVA:

6 Section 13(2)

7 Ibid.

8 As per Section 28(2) of the PWDVA read with Rule 12 of the PWDVR.

9 Order V of the CPC. See Annexure III.

10 Chapter VI of the CrPC (Sections 62-67) provides different modes of effecting service in diverse situations. See Annexure III.

11 Order V Rule 9 of the CPC provides that the "summons" or notices shall be delivered by the Court to the "proper officer" or any of his subordinates to be served by him in the manner approved by the Court. "Proper Officer" means an officer of the court: usually the bailiff. The "proper officer" may require any other authorised person to effectuate service. Means of service include registered post acknowledgement due, speed post, any courier approved by the High Court or any other approved means of transmission of documents, including fax or emails addressed to the defendant.
In addition, under Order V Rule 9 of the CPC, a summons may be served directly by the applicant/aggrieved person as dasti notice. Dasti service means that the applicant or the aggrieved person takes the responsibility of serving notice upon themselves. This form of serving is also referred to as "private notice". In Amar Kumar Mahadevan v. Karthiyayini [High Court of Madras, Criminal Original Petition No. 32475 of 2007 and M.P. Nos. 1 and 2 of 2007 (Decided on 28.11.2007)], the Court held that an order to the aggrieved person directing the issue of private notice to be served on the respondent is not in conflict with the statutory provisions, and is in the exercise of the power of the Court to lay down its own procedure under Section 28(2) of the PWDVA.
In arriving at its decision, the Court said that "this Act being a beneficent piece of legislation enacted for providing minimum relief to an aggrieved person affected by domestic violence, even if there is any minor procedural deviation, such minor procedural deviation being technical in nature, need not be taken serious note of and on that ground, the proceedings pending under the Act cannot be quashed."

12 Summons or notices are served under the CrPC upon a determination by the Court that a prima facie case has been made out. Section 62 states that summons shall be served by a police officer, by an officer of the court (i.e., the process server) or by a public servant.

No. __________/DHC/Gaz/G-X/2008

From

The Registrar(Vigilance),
Delhi High Court,
New Delhi.

To

The District Judge I-cum-Sessions Judge,
Delhi.
New Delhi, dated the __________ 2008

Sub : Service of Notices under "The Protection of Women from Domestic Violence Act 2005"

Madam,

I am directed to say that Hon'ble the Chief Justice of this Court has been pleased to issue the following practice directions to the Metropolitan Magistrates with regard to issue and service of notices under "The Protection of Women from Domestic Violence Act, 2005" :-

1. The notices issued to the respondent or any other person under Section 12 or any other provision of "The Protection of Women from Domestic Violence Act, 2005" shall be handed over to the Protection Officer for service;
2. Every such notice shall contain a clear direction that in the event of the Protection Officer seeking help of the Process Serving Agency of the Police or the Nazarat of District Court, the concerned Officer in-charge shall depute a process server for effecting of service of notice/notices on the respondent or any other person on behalf of the Protection Officer;
3. Every notice shall be prepared in triplicate one copy of which shall be retained by the Protection Officer and remaining two copies shall be forwarded to the Process Serving Agency of the Police or District Nazarat for service, if the Protection Officer opts for service through them;
4. The process server so deputed to effect service of notice/notices shall return the notice/notices with a clear service report under his signatures to the Protection Officer, who after verification and satisfying himself about the correctness of report shall authenticate and submit the report to the Magistrate concerned;
5. Every notice shall contain a clear direction that in case the Protection Officer opts to personally serve the notice on the respondent but seeks protection of the Police, the officer in-charge of the Police Station in whose jurisdiction the service is to be effected shall provide the Protection Officer with adequate security.

I am therefore, to request you to please bring the above practice directions to the notice of all concerned Judicial Officers under your control and control of other District Judges for compliance, under intimation to this court.

Yours faithfully,

(R.K. Gauba)
Registrar (Vigilance)

Endst.No. 33643 /DHC/Gaz/G-X/2008 Dated: 19 November, 2008

Copy for information to :-

1. The Assistant Director(Women Welfare), Department of Women & Child Development, 1, Canning Lane, Kasturba Gandhi Marg, New Delhi.
2. Ms. Indira Jaising(Project Director), Lawyers Collective Women's Rights Initiative, 63/2, Ground Floor, Masjid Road, Jangpura Extn., N.D.-110014.

1.4 How to Serve Notice

Rule 12 provides the procedure to be adopted in serving notices. This self-contained code for serving notices integrates elements from the CPC and the CrPC[13] to ensure that notices are expeditiously served.[14] Moreover, High Courts in every state issue Rules on procedure to be adopted by the Courts in addition to the CPC and the CrPC. Protection Officers are advised to familiarise themselves with the procedures for service of notice provided in the Rules issued by the High Courts of their state.

1.4.1 Where Can Notice be Served?

Notice is to be served upon the respondent at the address stated by the aggrieved person or the complainant to be the respondent's:

- Place of residence or where he ordinarily resides

or

- Place of employment

1.4.2 How to Serve Notice in Cases Where the Respondent is Not Available

There may be a number of reasons, either wilful or inadvertent, for the respondent's non-availability. These reasons may broadly be categorized into two:

(i) Instances where the respondent, though present in the Protection Officer's jurisdiction, is not available, either wilfully or inadvertently, to accept notice.

(ii) Instances where the respondent is not present in the Protection Officer's jurisdiction.

Category (i)

In this first category, where the respondent is either inadvertently unavailable or wilfully refuses to accept service of notice, a PO may:

- Deliver a copy of the notice to the person in charge of the place.[15] The term "person in charge of the place" includes a duly authorised agent of the respondent,[16] an adult male family member if the notice is being served at his/her residence,[17] and the respondent's employer if the notice is being served at the place of employment.
- Paste a copy of the notice at a conspicuous place on the premises.[18] This option is available to the PO if the above option is not possible, for instance in those cases where the person in charge refuses to accept the notice. The notice may be affixed to the outer door of the residence or premises where the respondent is employed.

In Practice

Some Protection Officers in Himachal Pradesh serve notices through public announcements in local dailies in cases where the respondents are avoiding notice.

[Source: Staying Alive: 2nd Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act (2005); Lawyers Collective (Women's Rights Initiative)]

13 See footnotes 8 and 9 above

14 Rule 12(2)(d) states that the Court may direct any other steps necessary with a view to expediting the proceedings to adhere to the time limit provided in the Act.

15 Rule 12(2)(b)

16 Order V Rules 12-14 of the CPC

17 Order V Rule 15; Section 64 of the CrPC

18 As per Rule 12(2)(b) of the PWDVR, Section 65 of the CrPC and Order V Rule 20 of the CPC. Under Order V Rule 20(1A) of the CPC, the Court may also order service by an advertisement in a daily newspaper circulating in the locality in which the respondent is last known to have actually and voluntarily resided, carried on business or personally worked for gain.

In both of the above instances, after delivering or pasting a copy of the notice, the PO must return the original copy to the Court along with her/his statement or report that notice has been effected and mention the means by which notice was effected. Once this is done, service is deemed to be adequate and complete.[19]

Category (ii)

If the respondent resides outside the Protection Officer's jurisdiction and has no agent in India to receive notice, the following courses of action may be adopted:

- Notice may be addressed to the respondent at the place where he is residing by post, courier, fax, email or any other means provided for in the Rules of the concerned High Court.[20]
- The Protection Officer may request the Court to serve the notice through the Magistrate of the jurisdiction within which the respondent resides or is.[21]
- If the respondent resides or works in a foreign country, then notices may be served through Indian Embassy of the High Commission of that particular country.[22]

In Practice

- In West Bengal, Protection Officers take police assistance in serving notices outside their jurisdiction by using radiograms in police stations.
- In Delhi, Kerala, Manipur and Orissa, Protection Officers network with their counterparts in other jurisdictions who can serve notice on their behalf.

[Source: Staying Alive: 2nd Monitoring & Evaluation Report 2008 on the Protection of Women from Domestic Violence Act (2005); Lawyers Collective (Women's Rights Initiative)]

1.4.3 Consequences of the Failure to Accept Notice

Rule 12(d) of the PWDVR sets forth the consequences of failure to accept notice. This provision specifies that failure to accept notice or the refusal to accept notice shall entail the same consequences as provided under Order V of the CPC and Chapter VI of the CrPC. Hence, if the provisions of the CrPC are followed, then the respondent's non-appearance will lead to the issuance of bailable warrants in the first instance and non-bailable warrants in the second. An ex-parte order may also be passed against the respondent under Section 23 of the PWDVA, if the circumstances so warrant.

2 Preparing a Safety Plan

One of the most important duties of the Protection Officer, mentioned in Rule 8(1)(iv) of the PWDVR, is to prepare a Safety Plan for the aggrieved person upon an application being moved under Section 12 of the PWDVA. A Safety Plan is a document prepared for the aggrieved person that identifies the ways in which the aggrieved person can protect herself during a violent incident and reduce the risk of serious harm. Although the law authorises the PO to prepare a Safety Plan when an application under Section 12 is submitted, it is advisable for POs to prepare a Safety Plan at the time of recording a DIR.[23] However, it

19 Order V Rule 17 of the CPC

20 Order V Rule 21 of the CPC

21 Section 67 of the CrPC provides that, "When a Court desires that summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served."

22 As per Order V Rule 26A of the CPC. The endorsement of the officer authorised by the Indian Embassy shall be deemed to be evidence of service.

23 Rule 8(2)(a) of the PWDVR mandates that it is the duty of the PO to protect the aggrieved person from domestic violence. The Safety Plan provides a useful check list for POs to follow so as to anticipate and prevent future acts of domestic violence. It also empowers the aggrieved person in securing her own safety and taking preventive measures.

must be borne in mind that a Safety Plan is not a pre-condition for obtaining orders under the PWDVA.

In Practice

Anecdotal data from Maharashtra indicates that whenever an aggrieved person approaches a Protection Officer, the PO prepares a Safety Plan in addition to recording a DIR and assisting the aggrieved person in preparing an application under Section 12. This is especially so in cases where there is an apprehension of grave forms of domestic violence. The Safety Plan, so prepared, is then attached to the application filed in Court, also enabling the Magistrate better to gauge the situation and pass appropriate orders.

[Source: Informal interactions between POs and the Lawyers Collective (Women's Rights Initiative); December 2008]

A PO's role in preparing a Safety Plan is to assist the aggrieved person in assessing the risk the respondent poses to her and develop a practical plan to keep safe. To do this, the PO must conduct a riskassessment with the aggrieved person and exercise extreme care for the woman's safety.

POs must always bear in mind that it takes courage for a woman to initiate legal proceedings against members of her own family and intimate partners. In most cases, it is only when a person is unable to withstand the circumstances that she will make a legal complaint. Tolerance levels vary from person to person, as do pressures of individual situations. An aggrieved person is usually in the best position to assess the potential danger of her situation and should be encouraged to rely on her own instincts. It is likely that the aggrieved person has already engaged in significant safety planning on her own in the past.

Pointers in risk-assessment include:

- If the parties are in a matrimonial relationship and have been recently separated or the aggrieved woman is attempting a separation.
- The aggrieved woman strongly believes that she is in imminent danger.
- History and pattern of violence: factors like frequency, severity and timing of violent incidents in the past can often be strong indicators of present and future threats.
- Threats by the perpetrator.
- Previous incidents of stalking, harassment, intimidation and similar behaviour.
- History of assaulting behaviour or taking the law into own hands by the perpetrator.
- Alcohol or substance abuse.
- Particular vulnerability of the woman, for example: pregnancy, complete financial dependency, no support system etc.

Some general guidelines to be borne in mind while devising a Safety Plan:

- The PO must assist the aggrieved person in identifying and assessing the potential risks in a cogent and systematic manner.
- The PO must assist the aggrieved person in evaluating options that are available to her. As a first step, as per Section 5 of the PWDVA, the PO must provide the aggrieved person with information on her rights and services of Service Providers.[24] Evaluating options includes anticipating the consequences of each action and determining which option best increases the woman's safety and autonomy.

24 For further details on the manner in which such information is to be provided, see Chapter 4.

- A Safety Plan should provide multiple options and be prepared in association with a number of different situations in which the aggrieved person may find herself, such as during a violent incident, when she is preparing to leave, after leaving, at her place of employment, etc. Each of these situations would be associated with different risks. A PO should assist the aggrieved person in assessing risks in each of these contexts and generate options to meet the specific situation. Hence, if a particular plan does not work out, then the aggrieved person should be able to change her plan and use other options.

Illustrations of Options for Safety in Particular Situations

During a violent incident: Determine how best to exit the home or find lower risk places to which the aggrieved person can go if an argument occurs. Places with no exits (such as bathrooms or wall closets) or places that provide access to weapons (such as kitchens), are unlikely to be safe places.

Preparing to leave: Develop a list of people whom the aggrieved person may contact in an emergency or places to which she might go if she leaves. She should be asked to memorise emergency numbers and keep aside some money to make phone calls at all times.

After leaving: If the aggrieved person's economic dependence makes her more vulnerable to violence, then the Safety Plan should include options for her to become economically independent.

At her place of employment: Inform co-workers about the aggrieved person's situation so that they can assist in screening calls and inform her if the respondent attempts to find or contact her. Other options may be to travel to work with another person, change routes used to travel to work, etc.

- A Safety Plan must be comprehensive, concrete and should not be limited to strategies to respond to physical violence. The aggrieved person must and should be able to follow the plan if she finds herself in imminent danger.
- The aggrieved person should be advised to leave the site of violence if necessary. In such cases, the police should be intimated of the possibility of such a situation arising. If the aggrieved person, by leaving the site of violence, is leaving her home, then the following issues require consideration:
    - Whether there is a safe place where she can stay, whether independently or with family or friends; whether she has money; whether there is any possibility of the respondent searching for her at the place where she will stay. She should be advised against disclosing the address of where she is staying.
    - Developing a plan for the aggrieved person's removal from the place of violence if she is unable to do so herself.
    - Establish a code word or a sign so that co-workers, family, friends or neighbours are alerted of her condition and are able to initiate emergency steps.
    - Gather important documents and keep them in a safe place as there is a chance that the respondent might retaliate by destroying her personal property and documents. It is useful to leave a copy of important documents as well as extra clothes, money or keys, etc.

Examples of Important Documents

- Identification Cards
- Passports/Visas
- Marriage and Birth Certificates
- Deeds or Leases
- Degrees and Certificates
- Cheque books
- Credit cards
- Bank/Share statements
- Utility bills: phone electricity, gas, etc.
- Vehicle registration documents
- Proofs of stridhan: lists of articles/ receipts

Examples of Documents that are

- Required to Prove Domestic Violence
- Photographs with injuries
- Medical or medico-legal certificates
- Letters written by the aggrieved person or
- by the perpetrator
- Police complaints or Non-Cognisable
- Reports (NCR)
- Proof of the police's Daily Diary Entries
- (DDE)

Form V can be used in preparing a Safety Plan. This Form details forms of violence, the consequences of such violence and apprehensions of the aggrieved persons in Columns A-C. Column D entitled, "Measures required for safety," is for recording options that can be resorted to by the aggrieved person.

A Protection Officer is meant to fill in details in Columns C and D. In cases where the aggrieved person approaches the Court directly, she can either fill in these columns by herself or have a PO complete them for her with her consent after the application is filed in Court.

FORM V

[See rule 8(1)(iv)]

SAFETY PLAN

1. When a Protection Officer, Police Officer or any other service provider is assisting the woman in providing details in this form, then details in columns Cand D are to be filled in by the Protection Officer, Police Officer or any other serivce provider, as the case may be, in consultation with the complainant and with her consent.
2. The aggrieved person in case of approaching the court directly may herself provide dettails in columns C and D.
3. If any aggrieved person leaves columns C and D blank and approaches the court

directly, then details in the said columns are to be provided by the Protection Officer to the court, in consultation with the complainant and with her consent.

	A	B	C	D	E
SI. No.	Violence by the Respondent	Consequences of violence mentioned in column A suffered by the Aggrieved Person	Apprehensions of the Aggrieved Person regarding violence mentioned in Column A	Measures required for safety	Orders sought from the court

A PO may keep a copy of Form V with herself/himself, particularly in cases where the aggrieved person feels that having possession of such a document may put her in danger. In such cases, the PO should allow her access to this document as much as possible.

The aggrieved person should sign at the bottom of Form V. If she is illiterate, then the contents of the document must be explained to her and her thumb print be affixed at the end of the document. The PO must also sign the document in the space provided.

Ideally, Safety Plans should be reviewed periodically to ensure that they still meet the woman's needs and are consistent with any changed circumstances. Reviewing the Safety Plans also helps keep its contents and strategies fresh in the woman's mind.

3 Role in Assisting the Court in the Discharge of its Functions

Section 9(1)(a) states that it is the duty of the Protection Officer to assist the Magistrate in the discharge of her/his functions under the PWDVA. Section 9(2) further states that the PO shall be under the control and supervision of the Magistrate and perform the duties that may be imposed on her/him by the Magistrate. Rule 10(1) provides details on the duties that a Magistrate may impose on a PO. Magistrates must provide these directions in writing to the PO.

The duties of the PO, under the written directions of the Magistrate, are as follows:

(i) Conduct a Home Visit of the shared household premises and make preliminary enquiries.

(ii) Make appropriate enquiries and file a report on the financial status of the respondent.

(iii) Restore to the aggrieved person the possession of her personal effects, including gifts, jewellery and the shared household.

(iv) Assist the aggrieved person to regain custody of her children and secure rights to visit them under the PO's supervision.

(v) Assist the court in the enforcement of orders granted under the PWDVA in a manner directed by the Magistrate.

(vi) Take the assistance of the police, if required, in confiscating any weapon involved in the alleged domestic violence.

Rule 10(2) also provides that the Protection Officer shall perform any other duties assigned to her/him by the Magistrate or the State Government in giving effect to the provisions of the law. The PO is also duty-bound to follow any other directions issued by the Magistrate relating to general practice for better handling of cases.[25]

25 Rule 10(3)

While most of the provisions in Rule 10(1) are self-explanatory, some are discussed in detail in the following paragraphs.

3.1 Conducting a Home Visit

Rule 10(1)(a) allows a Magistrate to issue a direction to the Protection Officer to conduct a Home Visit of the shared household premises and make preliminary enquiries prior to granting an ex parte interim order to the aggrieved person.

The use of the term "preliminary enquiry if the court requires clarification" in Rule 10(1)(a) indicates that home visits are limited to an inquiry where the Court requires elucidation on the facts stated by the aggrieved person. Hence, a Court may direct the Protection Officer to conduct a home visit when the affidavit submitted in Form III by the aggrieved person requires elucidation in order to establish a prima facie case. In such cases, the Court may require an independent evaluation to make an informed decision.[26]

However, as the Home Visit is a valuable method of assisting the Court in the discharge of its functions, a Home Visit may be ordered at any other stage of the proceedings as well.

At the time of conducting a Home Visit, the PO Protection Officer performs her/his duties as an officer of the court.[27] Hence, she/he should not be biased towards any of the parties to the dispute and should limit her/his investigation to ascertaining the facts alleged or disputed and which are capable of physical and objective verification.[28]

Instances when a Court May Direct the PO to Conduct a Home Visit

- To enquire into the standard of living of the parties to verify the income of the respondent.
- To ascertain where the aggrieved person is currently residing, particularly in cases where a Residence Order is claimed.
- To ascertain patterns of living arrangements and the nature of the shared household (joint family, etc.), in cases where the aggrieved person claims a Residence Order. The Protection Officer may be required to create a site-plan in appropriate cases.
- To facilitate an enquiry to determine the "best interest of the child" where temporary custody has been prayed for under the Act.
- To verify the fact of dispossession of the aggrieved person from the shared household.

3.1.1 Specific Instructions to be Obtained from the Court for Conducting A Home Visit

Upon being directed by the Court to conduct a Home Visit, a Protection Officer must seek specific directions from the Court regarding the following issues:

- The exact purpose of the Home Visit and the deadline for filing any resultant report.
- The exact details about which the PO is required to enquire. For instance: to ascertain

26 A Court may, of course, pass such an order without ordering a home visit

27 Although the term "home visit" has been borrowed from the discipline of social work, it is important to remember that, in conducting home visits under this provision, a Protection Officer does not function as a social worker. In social work, home visits are important tools for gathering information about women, their family and the crisis that they are facing, through observation and listening. In addition, in social work, the purpose of a home visit is to provide information to the woman and to initiate a process of intervention. However, in the legal context of the PWDVA, the duty of the PO is solely limited to the gathering of information.

28 In this regard, the duties of the PO are akin to those of a Local Commissioner appointed under Order 26 Rule 9 of the CPC, applicable in civil proceedings for injunctions. This provision provides that, "In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or actual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules." (Emphasis added.)

if the aggrieved person is being denied access to necessities of life such as food, clothes etc; to prepare a site plan of the shared household if the aggrieved person has sought a residence order, etc.

- That the PO may speak to any person, including the respondent, in order to understand and obtain clarity as to the facts alleged in the application.
- If the PO apprehends threats of violence or coercion at the time of the Home Visit, she/he may request the Court to order the police to accompany her/him on the visit.
- If required, a PO may also request that a welfare expert or an individual associated with a Service Provider be directed to assist her/him in conducting the Home Visit.

3.1.2 General Guidelines to Be Kept in Mind while Conducting a Home Visit

Although a Home Visit must be conducted keeping in mind the legal context of the PWDVA, an observant and sensitive PO will find that a Home Visit allows her/him some understanding of various other issues, such as:

- The socio-economic condition of the family
- Decision-making patterns in the family
- Needs and expectations of the family
- Resistance and openness of the family
- Relationship of the family with neighbours
- Whether the neighbours or the housing society, etc. have any knowledge of previous acts of violence or have heard about or witnessed acts of domestic violence being perpetrated on the aggrieved person.
- Whether the aggrieved person is safeguarding her possessions or precious documents.
- Whether the respondent has any kind of substance addiction, such as alcoholism.
- The condition of the house – i.e., its state of organization or disorganization – that may indicate if there has been violence there.

In certain circumstances, a Home Visit may entail interactions with the family and access into the shared household. In such cases the following guidelines should be borne in mind:

Home Visits should be scheduled

Visits should be scheduled during a time with minimal disruptions. It is advisable for a PO to schedule an appointment with the family prior to conducting the Home Visit. The appointment should be within office hours and should be at the convenience of both the PO and the family.

When scheduling a visit, a PO should be clear about the purpose of the visit and state approximately how long it will last. If the family is expected to have specific documents at hand or needs to make any other preparations for the visit, it should be discussed at the time of scheduling the visit.

Home Visits should be organised

When a Protection Officer arrives at the shared household, it is possible that the aggrieved person or the respondent may want to be the centre of attention. It is advisable to spend time interacting with the aggrieved person or respondent, but also encourage the

other family members to interact. This provides an opportunity to observe the aggrieved person or respondent's behaviour in a family dynamic.

In order to minimise the likelihood of the discussions with the family straying from the intended goal of the visit, a PO may find it useful to prepare a check list to ensure that these discussions provide the information required by the court. Being organised can allow time to be used wisely and the goals of the visit to be met.

Home Visits should respect privacy

When conducting a Home Visit, a Protection Officer must remember that this is a family's home. Most of the time, activities may be conducted in areas of the home that the family considers 'public spaces,' such as a living room or family room. However, the legal requirements of the Court might require the PO to observe 'private spaces' as well. In this situation, a polite and respectful albeit firm approach is advised.

Home Visits should be supervisory

Both small and serious injuries may have occurred to the aggrieved person. So that mishaps do not occur in the Protection Officer's presence, it is advised that, while talking with the family, the PO may suggest that the aggrieved person or respondent and/or other family members participate in an activity that keeps woman or respondent safely within sight.

3.1.3 Challenges to a Successful Home Visit

A Protection Officer must anticipate and meet challenges that might arise while conducting Home Visits. Some such challenges and the means to overcome them are listed below:

- The postal address provided by the aggrieved person may either be wrong or incomplete. This may be because aggrieved persons are frequently not allowed to interact with the outside world and their state of mind may be confused due to violence. In such cases, where it is difficult to locate the shared household, the local shops, paanwala, small tea stalls, etc. may be approached for locating the address. Also, if there is anything specific about the aggrieved person, the respondent or his family members (such as the profession of the person, his/her pet name, etc.), such information can be an instrumental in locating the house. However, this information cannot violate the parties' right to confidentiality.
- The PO may face the risk of getting implicated in legal complications, for example: threats to initiate criminal cases on trespass. Therefore, she/he needs to be careful and non-threatening in her/his communication style and manner of presentation.
- A PO must seek police assistance if she/he has any concerns about safety.
- In rural areas, where distances are large, POs should plan their visits carefully and consider clubbing together visits in the same geographical area.
- During Home Visits, people may hospitably offer food, refreshments or other foodstuffs, such as food grains, vegetables, and fruits, to the PO. However, without hurting anyone's feelings, the PO must express her/his inability to accept such offerings by explaining that accepting these would be unethical as it may be regarded a creating bias.
- Sometimes respondents might become hostile, aggressive and reluctant to provide information. In such situations it is important that the PO remain calm, listen to the family members and persist in her/his line of questioning. However, if the PO has

apprehensions about personal safety, she/he should terminate the visit and report the reason for doing so accurately and honestly to the Court.

3.1.4 Home Visit Report of the Protection Officer

After the completion of a Home Visit, the Protection Officer must prepare a report providing details of facts that have been verified by her/him. This report should be submitted within the deadline mandated by the Court or, in cases where no such deadline has been mandated, as soon as it is possible.

The PO's Home Visit report is distinct from the Domestic Incident Report. A DIR is a recording of the aggrieved person's complaint and there is no legal requirement for conducting a Home Visit prior to recording the DIR. In contrast, a Home Visit can only be conducted upon receiving written directions from the Court.

In general, the Home Visit report submitted by the PO must be shared with all parties to the proceedings. However, the Court has the discretion to withhold the report when extraordinary circumstances so require, as for example, when the report reveals child sexual abuse and disclosure is not be in the best interest of the child.

Any party which is adversely affected by a Home Visit report may be allowed to dispute the report. In some instances, the Court may permit an examination of the PO on her/his Home Visit report.[29] In general, however, the Court will be reticent about permitting the PO to be examined about facts that are objectively verifiable,[30] as such facts can be disputed by using affidavits submitted by experts. However, examinations will be allowed if the Home Visit report contains opinions of the PO on the impact of violence or any other matter that is not objectively verifiable.[31]

3.2 Submitting a Financial Status Report

Rule 10(1)(b) of the PWDVR authorizes the Court to direct the Protection Officer to conduct an enquiry into the emoluments, bank accounts, assets and other documents of the respondent/s and to submit a report of the same. Such an investigation is crucial for the verification of assets of the parties and their financial status. This is particularly significant in cases where the relief prayed for is maintenance or an order restraining the respondent from disposing of his assets or the shared household. The Court can order this form of investigation at any stage of the proceedings.

All of the issues that arise vis-à-vis Home Visit reports are equally applicable to financial investigations undertaken pursuant to Rule 10(1)(b).

3.3 Restoring Possession of the Aggrieved Person's Personal Effects and Assisting with Custody Issues

Under Section 19(8) of the PWDVA, the Court may direct the Protection Officer to restore possession of personal effects belonging to the aggrieved person.[32] When doing so, the Court shall provide the PO with a list of items belonging to the woman. It is advisable that the PO present the Court order along with the list of items at the local police station before entering the aggrieved person's shared household. This will guard against any

29 The Court may, for example, permit examination if credible allegations of bias on the part of the Protection Officer arise.

30 As an alternative, the court may permit examination of persons interviewed by the Protection Officer (for example: relatives, neighbours, friends and employers) to corroborate (or dispute) the Home Visit report.

31 Order 26, Rule 10(2) of the CPC refers to the personal examination of the Commissioner on the report submitted in court. According to R. 10(3), "The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation."

32 Under Section 19(8), the Court may also direct the respondent himself to return to the aggrieved person her stridhan or any other property to which she is entitled.

allegations of trespass or theft made by the respondent/s. It is also advisable that the PO keep the local police informed of the restoration of personal effects once this has been accomplished. In case the PO apprehends violence or law and order problems at the time of retrieving the aggrieved person's personal effects, she/he should request police assistance or request that the Magistrate direct the police to provide assistance.

Under Rule 10(1)(d), the Magistrate may direct the PO to assist the aggrieved person in regaining custody of her children. As with the restoration of personal effects, in such cases, it is advisable that the PO inform the police of the order issued by the Magistrate before attempting to remove children from the respondent's custody.

3.4 Assisting the Court in the Enforcement of Orders

Rule 10(1)(e) allows the Magistrate to direct the Protection Officer to assist in the enforcement of the following orders:

- Protection Orders
- Residence Orders
- Orders for monetary relief[33]
- Custody Orders
- Interim Orders

At the time of providing such directions, the Court should provide a copy of the order to the PO, as well as instructions on the form of assistance required.

In general, the enforcement of orders is provided for in the particular Sections of the PWDVA pursuant to which an order is passed. To the extent that the individual Sections do not provide a specific enforcement mechanism, Section 28(1) and Rule 6(5) provide that the enforcement procedure under Section 125 CrPC can be used.[34]

A copy of the order is to be provided free of cost to the person in whose favour it is passed,[35] and it may be enforced by any Magistrate in any place where the party against whom the order is to be enforced is. For example, an order passed in favour of an aggrieved person can be enforced by the Magistrate in whose jurisdiction the respondent resides or is gainfully employed. In such cases, either of the Magistrates (i.e., the Magistrate passing the order and the Magistrate in whose jurisdiction the respondent is in) can issue written directions to the PO within their jurisdiction to render assistance.

Additional orders that can be granted by the Magistrate to ensure enforcement are as follows:

Protection Orders

The breach of a protection order is deemed to be a criminal offence under Section 31 of the PWDVA. The Magistrate may also direct the police to provide protection to the aggrieved person or to assist her or the person making the application on her behalf in implementing the Court's order. If the PO is the person making the application on behalf of the aggrieved person, then she/he is entitled to receive police assistance at the time of implementing and enforcing a protection order.[36]

In addition, the Magistrate may direct the officer-in-charge of the police station in

33 See also Section 9(1)(h)
34 See Chapter 3 for a discussion on the procedure to be followed under the Act.
35 Section 24
36 Section 19(5)

whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.[37]

Residence Orders

Section 19(3) of the PWDVA provides that the Magistrate may direct the respondent to execute a bond, with or without sureties, for preventing domestic violence. Further, the Act makes it clear that such a direction by the court, "shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly".[38]

Monetary Orders

Section 9(1)(h) of the PWDVA requires Protection Officers to ensure that the order for monetary relief under Section 20 of the Act is complied with and executed in accordance with the procedure prescribed under the CrPC.

The procedure for execution is provided in Section 128 of the CrPC, which addresses the execution of Maintenance Orders granted under Section 125 of the CrPC. The same procedure may be followed for orders for monetary reliefs granted under the PWDVA. Moreover, Section 20(6) of the Act authorises the Court to attach the salary of a respondent who disobeys an order for monetary relief under Section 20(1).

Orders may also be enforced in accordance with Section 431 CrPC, which is the manner in which fines and penalties are recovered under criminal law.

According to Section 20(4) of the Act, the Magistrate must forward a copy of any order for monetary relief to all parties to the application and to the in-charge of the police station where the respondent resides.

If the respondent fails to make a payment as ordered, the Magistrate may direct that the respondent's employer or debtor pay the aggrieved person directly or deposit specified sums with the Court to be conveyed to the aggrieved person.[39] The PO may ask for such a direction to ensure that the order for monetary relief is made expeditiously available to the aggrieved person.

4 Breach of Orders

Section 31(1) provides that the breach of a Protection Order or any interim order is an offence under the PWDVA that is punishable with imprisonment which may extend to one year or with a maximum fine of Rs. 20,000/- or both. A warrants procedure is to be adopted in conducting trials for the breach of protection orders.[40]

The procedure to be adopted in dealing with complaints of breach is provided in Rule 15 of the PWDVR. Rule 15 provides that an aggrieved person may report the breach of a protection order or an interim protection order to the Protection Officer[41] in writing and that the report should be signed by the aggrieved person.[42] The PO must forward a copy of the complaint, along with a copy of the protection order of which a breach is alleged, to the concerned Magistrate for appropriate orders.[43]

The aggrieved person may also choose to make a complaint of breach of protection order or interim protection order directly to the Magistrate or to the police.

37 Section 19(7)
38 Section 19(4)
39 Section 20(6)
40 For details on procedures to be adopted in trials under Section 31, please consult LCWRI's Handbook on Law of Domestic Violence.
41 Rule 15(1)
42 Rule 15(2)
43 Rule 15(3)

If, at any time after a protection order has been breached, the aggrieved person seeks assistance, the PO shall immediately aid her by seeking help from the local police station and assisting her to lodge a report to the local police authorities in appropriate cases.[44] On receiving a complaint of breach, the local police station having territorial jurisdiction shall deal with the complaint in the same manner as it would a cognisable offence as provided under Sections 31 and 32 of the PWDVA.[45]

❑❑❑

44 Rule 15(5)

45 Rule 15(8). Section 32 provides that offences under Section 31(1) are cognisable and non-bailable.

Procedure to be adopted by the Protection officer

A) Before the Aggrieved woman approaches the Court:

On receipt of the complaint of domestic violence from the aggrieved person (AP),

a. The PO shall explain the aggrieved person, in a clear, accurate and sensitive manner, the offence of domestic violence and rights and remedies available to her under the PWDVA.

b. If the AP is unable to understand English, then the PO must ensure that such information is provided in the vernacular or local language.

c. The PO shall record the Domestic Incident Report.

d. While recording the Domestic Incident report (DIR), the following procedure shall be pursued by the PO:

- PO shall counsel the AP on the content of the DIR and manner in which information is to be recorded, prior to filling in the DIR.
- PO must ensure that the DIR is completed with care and precision and accompanied by all relevant supporting documents
- Documents while relevant, are not pre-requisite for recording the DIR. Hence AP can record DIR even is she is unable to provide any documents.

- Documents that can be attached to a DIR can be divided into three broad categories:

i) **Documents that are needed to prove domestic violence:**

(a) Medico-Legal Certificate

(b) All documents/certificates issued by any treating medical doctor

(c) All documents issued by a mental health professional pertaining to the aggrieved person's psychological status.

(d) Any First Information Report (FIR) or Non-cognisable [Offence] Report (NCR) alleging domestic violence previously registered by the aggrieved person.

(e) Copies of complaints received by any other authorities that the aggrieved person may have approached for assistance.

(f) Correspondence between the aggrieved person and other family members in which she records incidents of domestic violence.

(ii) List of stridhan articles.

(iii) Documents that are needed to support claims for relief under the PWDVA:

(a) To prove a domestic relationship, particularly matrimonial relationships:

- Ration card
- _ Passport
- _ Photograph with mangal sutra
- _ Invitation cards of the wedding
- _ Bills of the marriage hall
- _ Photographs or video recordings of the marriage
- _ Certificate from the temple or priest who performed the marriage

(b) To provide a basis for claiming remedies under the law and for proving the aggrieved person's standard of living:

- _ All documents relating to joint bank accounts, salary statements, rent receipts, bills and other pertinent financial matters such as pay slips of the respondent, income tax returns, bank papers, share or bond certificates, receipts for significant purchases.
- All documents of tuition fees and other expenses of children.

e. After filling the DIR, PO must explain its content to the AP

f. The DIR shall be signed by the AP and countersigned by the PO.

g. Once the DIR is recorded, the PO shall : Provide the original DIR to the Magistrate. Forward a copy of the DIR to the officer-in-charge of the police stationthe registered Service Provider , aggrieved person.

h. PO shall retain a copy of the DIR recorded for her/his own records.

i. PO shall not conduct any enquiries at the time of recording the DIR.

B) If the AP wants to go to the Court[1]:

a. The PO shall fill in FORM II, III and V for filing the Application in the Court seeking various reliefs under PWDVA.

b. Form II is the application u/s 12 of the Act. Po can seek a detailed application from the aggrieved person and attached it to the DIR.

c. While filling in FORM III, the PO shall ensure:

1. Form III must be submitted in the same Court as the application.
2. The details provided in Form III is in consonance with statements made in Forms I and II.
3. Under Item 2 of Form III, the aggrieved person, if she is the mother of the children, can put her own name as the natural guardian of minor children.

d. While devising a Safety Plan ie. FORM V:

1. The PO shall assist the aggrieved person in identifying and assessing the potential risks in a cogent and systematic manner.
2. The PO must assist the aggrieved person in evaluating options that are available to her.
3. The aggrieved person should be advised to leave the site of violence if necessary. If the aggrieved person, by leaving the site of violence, is leaving her home, then the following issues require consideration:
4. Whether there is a safe place where she can stay, whether independently or with family or friends; whether she has money; whether there is any possibility of the respondent searching for her at the place where she will stay. She should be advised against disclosing the address of where she is staying.
5. Developing a plan for the aggrieved person's removal from the place of violence if she is unable to do so herself.
6. Establish a code word or a sign so that co-workers, family, friends or neighbours are alerted of her condition and are able to initiate emergency steps.

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7. Gather important documents and keep them in a safe place as there is a chance that the respondent might retaliate by destroying her personal property and documents. It is useful to leave a copy of important documents as well as extra clothes, money or keys, etc.

e) PO should file a requisition before Court under section 19(7) of PWDVA to issue directions to the officer at the Police station to assist them.[2]

f) The PO shall follow up with the Civil surgeons/ medical facilities in their district for cases of domestic violence registered with them and take an appropriate action.

g) The PO shall utilize the services of Service provider in order to provide psycho-social counseling/ support to the AP.

h) The PO shall conduct the Home visits or enquiry at the direction of the Court and submit the report within time mandated by the Court

i) On receipt of breach of the orders by the Aggrieved person, The PO shall reduce the same in writing with signature of AP. PO shall forward the copy of the complaint of breach of order directly to the Magistrate and Police station. The PO shall immediately aid AP by seeking help from the police station and assist her to lodge a complaint in the police station in appropriate cases.

2 Circular issued by Andhra Pradesh Women and Child Development department dated 2nd November 2008- noted at pg – 60 of Third Monitoring and Evaluation report

ARTICLES

Concern for the Dead, Condemnation for the Living

— Indira Jaising

While ruling that women were increasingly misusing Section 498A of the Indian Penal Code, the Supreme Court ought to have been more conscious of the prevalence of domestic violence, and the diffi culties women face in approaching the police. When faced with evidence of a poor conviction rate, instead of inquiring whether the prosecution was poorly conducted, the Court assumes that the "disgruntled wives" filed false cases. Ironically, while the courts convict husbands and their families in cases of dowry deaths, the woman's invocation of Section 498A when she fears for her life or demands her share of the matrimonial home, earns her the accusation of being a "disgruntled wife".

In the mid-1980s, the legal category of "domestic violence", which we use today to describe violence in the intimate sphere, did not exist. The expression first found its place in Indian law in 2005. This is not to say that domestic violence did not exist before 2005, but rather, that an injury was not an injury until it had a legal name and defi nition. This was also the case with sexual harassment at the workplace. It was not until the 1970s when Catherine Mackinnon conceptualised the fi rst sexual harassment claim as an action under the Civil Rights Act, 1964 as being a form of discrimination against women based on sex, that it became an actionable wrong. Such is the defi ning power of the law.

In the mid-1980s, there were cases of women dying in the matrimonial home in what came to be described as "stove bursts" in the kitchen. The polyester king, Reliance, contributed the nylon saree which clung to the body resulting in instant death. These deaths were routinely recorded by the police as "accidental". It was the foresight and historic campaigns of the mothers of these women who died which led them to demand the reopening of the "closed" police fi les and call for an investigation of these deaths as murder. Satyarani Chaddha was one of the foremost among those brave mothers who refused to accept that her daughter, Kanchanbala, had died an accidental death within months of her marriage. It is ironic that the judgment of the Supreme Court in Arnesh Kumar vs State of Bihar & Ors[1] (henceforth Arnesh Kumar) was delivered on the very day that Satyarani Chaddha died, 2 July 2014. Her son-in-law had just been convicted of abetting the suicide of his wife but he absconded on the very day the judgment was delivered, never having seen the inside of a jail. This fact will have to be borne in mind when discussing the subtext of the judgment in Arnesh Kumar, which is quite plainly in response to the cry "women misuse the law" which is heard from the "save-the-family" lobby. Indeed, there are observations in the judgment which are a giveaway; for instance even before commencing a discussion on legal provisions, the Court states that "(t)he institution of marriage is greatly revered in this country".

Bold Provision

Alarmed by the daily headlines of women dying of "stove bursts", in 1983 the then Congress government of the day introduced Section 498A into the Indian Penal Code (IPC). It was a bold and brave provision, introducing the offence of cruelty by a husband and his family against a wife as an offence. It was bold for several reasons. One, that it introduced criminal offences in intimate relationships, which thus far were considered beyond the reach of the law, and two, because cruelty was not confi ned to the demand for dowry alone nor confined to physical mutilation or injury but extended also to mental

1 Criminal Appeal No 1277 of 2014, Supreme Court of India, decided on 2 July 2014 by Justices Chandramauli Kr Prasad and Pinaki Chandra Ghose.

cruelty. Cruelty is defined as any wilful conduct which is likely to drive a woman to commit suicide, or cause grave harm or injury to danger to her life or health, mental or physical. It includes harassment of a woman with a view to coercing her or anyone related to her from meeting an unlawful demand. It is obvious that the threshold of behaviour required to constitute cruelty is high and hence there is an inbuilt safeguard in the Section itself for invoking it.

The offence is not confi ned to the giving and taking of dowry, but extends to all conduct which causes mental or physical injury of a high order to the woman by a husband or her family members. The word "harassment" itself refers to a continuous coercive conduct, which causes mental anguish to the woman. However, although it made several innovations, it made the threshold of cruelty required to invoke the law too high. While the conduct which qualifies as cruelty is of a grave nature, to place it so high as to expect police intervention only when there is an actual attempt at suicide by the woman would be to defeat the purpose of the law. Hence, the Section is and must be invoked when women are oppressed in the matrimonial home behind closed doors, to the extent that they fi nd it impossible to live a life of dignity. Denial of food, locking up and preventing communication with the outside world, and repeated threats to drive her out of the matrimonial home, will all qualify as mental cruelty, especially so in the case of women who are stay-at-home housewives with no independent income of their own. Another very common reason for harassment is to call a woman a baanjh (infertile) or blame her for not producing a male child, a refl ection of the pronounced son-preference in our society. Apart from these circumstances, the proverbial demand for dowry is ever present in Hindu marriages, and has now spread to other communities as well.

Section 498A includes cruelty by a husband's relative, and although the word "relative" is not defi ned, it is obvious that the mother-in-law and the father-inlaw would be included in this defi nition. Grandmothers and grandfathers of the husband, be they "bedridden", are very much contemplated by the Section as being responsible for cruelty towards a married woman. Given that the primary form of living in most homes is a joint family this should not surprise anyone. Moreover, the pervasive domination of the mother over the son in most Indian households is also a phenomenon that the Court should have taken note of while delivering the judgment in Arnesh Kumar.

What is noteworthy, however, is that the cruelty by a husband or his relatives was made an offence punishable with imprisonment for a period of upto three years, and the offence was made cognisable. A cognisable offence is one for which an arrest can be made without a warrant from a magistrate. Ordinarily, offences punishable with imprisonment of less than seven years are non-cognisable, but if the legislature feels that an offence is suffi ciently signifi cant to curb a social evil, such offence is made cognisable even though punishable with imprisonment of less than seven years. Offences against women fall into this category. Outraging the modesty of a woman, using obscene words and gestures, and now, after the amendments to the IPC in 2013, voyeurism, stalking, acid attacks and sexual harassment are all cognisable offences, though punishable with less than seven years imprisonment.

In 1986, the IPC was once again amended to introduce Section 304B, which provided that if the death of a married woman occurs in unnatural circumstances within seven years of the marriage, and it is shown that just before her death she was treated with cruelty in relation to a demand for dowry, it shall be presumed that her husband or his relatives caused the death. We must appreciate that the two sections are part of a composite

scheme; one is invoked before the woman dies and is preventive in nature (Section 489A), the other after she is dead (Section 304B). Surely, the purpose of law must be to keep the woman alive, and if Section 498A were properly invoked at an appropriate time, we would not see the number of dowry deaths that we continue to see till this day.

Difficulties of Filing an FIR

While rendering the judgment in Arnesh Kumar, the Court ought to have been more conscious of the prevalence of domestic violence, and the diffi culties women face in approaching the police. Filing a fi rst information report (FIR) is indeed an ordeal as the police invariably try numerous techniques to avoid registering one, ranging from sermons to reconcile, to threatening the abuser – everything but fi ling a FIR! Hence, it is hard to imagine that the police are registering frivolous FIRs leading to acquittals. There is no reliable data on prevalence of domestic violence, and whatever data is available varies widely owing to the differences in research methodologies. The estimates from community-based studies vary from 18% to 70% while National Family Health Survey (NFHS)-3 indicates a lifetime prevalence rate of domestic violence to be 35% among women of reproductive age. The NFHS is a large survey conducted across India in a representative sample of households throughout the country and so, arguably, these rates are only the tip of the iceberg. According to NFHS-3 data, 25% of women experienced physical or sexual violence in the 12 months preceding the survey. Among those women who reported physical violence by their husbands, 36% experienced injuries in the form of cuts, bruises or aches, while 18% suffered from severe injuries in the form of sprains, dislocations, broken bones and severe burns.

As per the National Crime Records Bureau (NCRB), which is relied upon by the Court, in 2011 a total of 1,14,372 cases were registered under crimes against women in matrimonial homes. However, the estimate derived from NFHS-3 data indicates that in the same year there were at least 59 million women who experienced some form of physical or sexual violence in the preceding 12 months. As per NFHS, a mere 2% of these women may have sought police support, which translates into 2.8 million women. This number is 2.5 times more than what the NCRB reports.

This is evidence that a large number of women experiencing domestic violence are not reaching the police. Further evidence of reluctance on the part of women to register police complaints emerges from analysis of service records of a public hospital-based crisis intervention centre, Dilaasa.[2] Of all the women registered at the centre between 2001 and 2010, a total of 1,675 married women were considered for the purpose of this analysis. The fi ndings are illuminating:

- 47% of the women had sought police support against violence before coming to Dilaasa; of these, almost all had only registered a NC. Merely 2% had filed a FIR.
- 53% of the women had never gone to the police. Among women who did not seek police support, one-third had experienced violence for three to five years; 64% of them reported violence during pregnancy; 32% reported that they had attempted suicide in the past as a consequence of the ongoing abuse; 39% experienced physical violence in the form of pulling of hair and banging of head while 29% were abused by punching in the chest, face and abdomen.

Sexual violence was also experienced by 27% women in the form of forced sexual

2 Dilaasa is a joint initiative of the Centre for Enquiry into Health and Allied Themes, Mumbai (CEHAT) and the Mumbai Municipal Corporation. The CEHAT team provided these fi ndings based on their ongoing analysis of service records.

intercourse. Additionally, 26% of them were abused with instruments which include hitting with blunt and sharp objects, use of belt and inserting objects into vagina.

A Curious Phenomenon

Considering the severity of abuse reported by women, it is evident that these women may have sought treatment for the injuries caused but they had not filed a police complaint. The contact of these women with the hospital helped them to access a crisis intervention department for psychosocial services, thus underscoring the need for health systems to recognise domestic violence as a public health issue and offer services to them to mitigate consequences of violence.

Even in the case of dowry deaths, there is a discrepancy. The NCRB reports a sharp rise of 6.4% in dowry deaths from 2007 to 2012, when the fi gure stood at 4,946 deaths. But a study reported by The Lancet estimates over 1.63 lakh annual fi re deaths in India, 2% of all deaths in the country. Of these, 1.06 lakh occur among young women. The authors conclude that death due to burns is not only behind most deaths among women between 15 and 34 years of age, the number is six times higher than the offi cial national statistics in India, compiled by the NCRB.[3]

Yet in our courts we see a very curious phenomenon. Courts are quick to convict for dowry death. Our law reports are replete with cases of husbands and their family members convicted for dowry death under Section 304B. No court has ever suggested that the dead woman lied, or misused the law, as indeed the dead body is proof of the cruelty she faced when alive and dead women tell no lies. Judges, when convicting under Section 304B, are quick to condemn the institution of dowry and bemoan the fact that it exists till today. Yet when it comes to the invocation of Section 498A, the fi rst suggestion is that "disgruntled wives" are misusing the law to put "bed-ridden grandfathers and grandmothers" behind bars. Hence the misuse of Section 498A consists of putting people behind bars. But is that not the essence of all crime? Are all cognisable offences not such that arrests are made for custodial interrogation?

How does one explain this concern of the courts for the dead and condemnation for the living? Could it be that dead women exercise no rights nor claim a right to reside in the shared household? And what does one understand by the expression "disgruntled wife", a wife claiming her right to reside in the shared household?

We must turn to the Protection of Women from Domestic Violence Act, 2005 (PWDVA) for an answer to this question. The Lawyers Collective has been analysing judgments and orders passed under the PWDVA consistently since 2007, the very fi rst year of its implementation. The Act itself was enacted to provide a civil remedy for domestic violence, a legal category which emer ged in our jurisprudence for the fi rst time in 2005. As one scholar has noted, it is surprising that a country which has non-violence as its founding faith took over 60 years to get a defi nition of violence included in the law. The PWDVA defi nes domestic violence as follows:

> 3 Definition of domestic violence. For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it –
>
> (a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

3 P Sanghavi et al (2009), "Fire-related Deaths in India in 2001: A Retrospective Analysis of Data", The Lancet, Volume 373, Issue 9671.

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I – For the purposes of this section –

(i) 'physical abuse' means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) 'sexual abuse' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) 'verbal and emotional abuse' includes – (a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and (b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) 'economic abuse' includes – (a) deprivation of all or any economic or fi nancial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance; (b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and (c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II – For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes 'domestic violence' under this section, the overall facts and circumstances of the case shall be taken into consideration.

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The PWDVA was exceptional in that it not only defi ned domestic violence to capture the experience of women in intimate relationships without narrowing the scope of the law, but it also put in place public-supported protection offi cers whose role it was to assist

women to access the law. The theory behind the law was that it is part of the due diligence of the state to support women facing violence through assistance in legal proceedings. The Act tried to introduce multidisciplinary personnel to assist a woman, as a protection offi cer would be a qualifi ed social worker with appropriate experience. She would not only a ssist the woman but also provide much needed assistance in collecting evidence, to which the woman would have no access, on behalf of the Court. It was thus an attempt to depart from the ordinary adversarial approach of the judicial process when applied to domestic relationships.

The PWDVA was successfully operated in the fi rst year of its existence in Andhra Pradesh. The police were sensitised to the law and they made referrals to the protection officers who were in turn recruited and trained as public servants to assist the woman from the commencement to the conclusion of the case. These protection offi cers met the woman, filled in the domestic incident report, filed applications before the Court, and argued cases, providing the perfect public model for justice delivery. In accordance with the role visualised for them under the law, they were functioned as mirror images on the civil side of the public prosecutor in criminal cases. Unfortunately, the Advocates Act, 1961, which gives only advocates the right to address the Court, cut their progress short. In all other parts of the country, the system did not function simply due to non-appointment of protection officers. Those that were appointed had to contend with the traditional hostility of judges while dealing with non-lawyers, and the p rotection offi cers found themselves marginalised.

Significantly, thanks to the Supreme Court, the Lawyers Collective has had access to judgments and orders passed under the PWDVA in different states. It has been presenting its analysis in the form of annual monitoring reports. In the sixth such report[4] while analysing the orders, we found that courts were denying relief by interpreting the words "domestic violence" in a restrictive way, and contrary to the defi nition in the Act itself. One judgment, for example, said that refusal to maintain a wife was not economic violence. The expression "domestic relationship" was also restricted to current relationships by ignoring the clear defi nition in the law which indicated that former relationships are also covered. This ensured the elimination of divorced women on the ground that they were not in a domestic relationship. The judgment of the Supreme Court in Batra vs Batra[5] is too well known to invite further comment. The single most important contribution of the law was a clear and specific mandate that every woman in a domestic relationship has a right to reside in the shared household. The shared household was defi ned as the household where the persons lived or had lived and the defi nition specifically excluded all consideration of ownership of the property as being irrelevant to deciding whether the right existed. In Batra vs Batra the Supreme Court reinstated the right to property with a vengeance in the law of matrimony and said that the right of a woman to reside in the shared household only existed if the husband owned the property in question.

Do we see here the concern once again for "bedridden grandfathers and grandmothers"? We will return to this theme later. What we noticed in subsequent years was that the courts were reluctant to reinstate a woman in the shared household if she has left as a consequence of the violence or has been thrown out of the shared household. This became a "heads I win, tails you lose" situation.

'Property' Cases

Slowly a picture started emerging. Courts were basically implementing personal

4 Staying Alive: Sixth Monitoring and Evaluation Report of the PWDVA (2013), Lawyers Collective.

5 S R Batra & Anr vs Smt Taruna Batra (2007) 3 SCC 169.

laws with marked determination in proceedings under the PWDVA, forgetting that this is a secular law applicable to all communities regardless of religion. One of the most important provisions of the Act, the right to reside in the matrimonial home, lost its lustre. You had it if you had it; if you did not have it, you did not have it. Slowly but surely, we started getting orders which stated, in many different ways, that women were misusing the law, and the old argument made previously in the context of the criminal law resurfaced. But this time, the nature of the misuse was a demand for a share of the matrimonial home. Courts started characterising the cases under the PWDVA not as cases of domestic violence, but as cases of "property". A woman demanding the right to reside in the matrimonial home became a "disgruntled wife" demanding property.

As a result, whether women invoke the criminal law or the civil law, they are said to be misusing the law! Hence, use of the law per se becomes misuse; the impact of this argument is that access to justice is denied.

This brings us fi nally to an analysis of the judgment in Arnesh Kumar. The judgment offers statistics of the high rate of acquittals as evidence of the fact that these wives have misused the law. When faced with evidence of a poor conviction rate of 15% (juxtaposed with a high rate of charge-sheeting at 93.6%) the Court ought to have been alerted to the fact that the prosecution has not been properly conducted during the trial. Instead, by an inverted logic, these statistics are offered as evidence that an overwhelming majority of these cases, since they result in acquittals, were false cases brought by "disgruntled wives".

Court's Sympathy Misplaced

A high rate of acquittal can result from a botched investigation, the benefit of the doubt being given to the accused, or plain bias against women accessing the law. Add to this the fact that the Supreme Court itself has encouraged settlements under Section 498A, thereby making a non-compoundable offence into compoundable one. A good deal of these acquittals could also be women turning "hostile" and not giving evidence against their husbands at critical stages of the case, due to pressure from the family or due to such "settlements". The point is, without analysing the cause of acquittals, the sympathy of the Court for the husband's family is misplaced, as is its deprecation of the police in arresting them.

It is true that the police notoriously misuse their powers, and had the judgment come in the context of any other crime, it would have been welcome. The factors mentioned in Section 41 of the Criminal Procedure Code (CrPC) warranting arrest are the same for all offences – likelihood of interference with evidence, pressurising the woman to give up the case, to enable a proper investigation, and to prevent absconding. All these are even more likely to occur in intimate relationships rather than in traditional crimes, hence warranting an arrest of the accused.

Women are not particularly fond of the criminal law, nor interested in sending their in-laws behind bars, any more than any other aggrieved person. The law of bail is the same for offences punishable with imprisonment below seven years and above. It is also the same for "disgruntled wives" and those who are cheated, beaten or murdered. Hence one fails to comprehend why the Supreme Court casts wives as vindictive in the fact of accessing the criminal law. Civil law is notoriously expensive to access, and is often inherited by subsequent generations. If anything, the statistics point to a dysfunctional and moribund legal system, and the judges would do well to look within.

The issues that the Arnesh Kumar judgment raises are profound. When is a crime a crime? When is a civil wrong a wrong? What kind of legal system are we entitled to expect? When will women's rights be treated as women's rights?

Accountability for Judges

Throughout the implementation of the law, the judges are in search of a perfect victim, a woman who dutifully follows the pati parmeshwar (husband is god) tradition, tolerates violence, produces male children, and makes no demand for her rights. But why would such a woman need any protection from the law? On the contrary, it is the woman who is an "imperfect victim" – the divorced woman, the separated woman, the woman in a live-in relationship, the widow who is cast out of the shared household, the woman who fails to bear a male-child – who is most in need of protection of the law.

What then is the solution to the problem? One answer is obvious. Judges must be held responsible for their misogyny and made accountable for their judgments. Also, the recognition of full-fl edged equal and economic rights for women within marriage is a must.

CASE LAWS

[2013] 0 Supreme(SC) 525051 [2014] 0 CrLJ 1000/ [2013] 4 BBCJ(SC) 2931 [2014] 1LW(SC) 2941[2013] 15 JT 129/ [2013] 8 Supreme 416/ [2014] 0 AIR(SC) 857/ [2014] 3 SCC 712/ [2014] 1 JLJR(SC) 578

SUPREME COURT OF INDIA

SUDHANSU JYOTI MUKHOPADHAYA, V. GOPALA GOWDA, JJ.

SARASWATHY- APPELLANT
VERSUS
BABU - RESPONDENT

CRIMINAL APPEAL NO. 1999 OF 2013 (arising out of SLP(Cr1.)No.2190 of 2012) Decided On :25-11-2013

(a) Protection of Women from Domestic Violence Act, 2005 -Section 3(iv) - "Domestic violence" - relates to 'economic abuse' which includes prohibition or restriction to continued access to resources or facilities to which a person is entitled - Respondent husband continuing such domestic violence. (Paras 12 and 13)

(b) Protection of Women from Domestic Violence Act, 2005 - Section 3 - a Act of domestic violence though started prior to enactment of Act 2005, continued even thereafter -Appellant wife entitled to protection of the Act. (Para 15)

(2012) 3 SCC 183 - Relied upon

Facts of the case:

The parties were married in 2000.

After 4 months of marriage the appellant wife was thrown out of matrimonial house for not fulfilling demand for more dowry.

The wife filed suit for restitution of marriage while the husband filed suit for dissolution of marriage.

Petition for restitution of marriage was allowed.

In 2008 the wife filed petition under Section 19,20 and 22 of the Protection of Women from Domestic Violence Act, 2005 which was allowed.

Respondent husband did not obey the decrees and orders of the courts.

High Court in the meantime held that the ordealof the wife was continued from prior to enactment of the 2005 Act hence she is not entitled to its protection.

Finding of the Court:

High Court erred In law.

Result : Appealallowed.

CRIMINAl_ PROCEDURE CODE: S.1251 HINDU MARRIAGE ACT:S.13(1)(i)(a),S.13(1)(iv),S. 91 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT : 5.12, 5.18, S.19, S.20,S.22,S.3,S.31,S.32,S.74

IMPORTANT POINTS Economic abuse falls in 'Domestic violence'. Act of domestic violence continuing fro prior to the enactment would be covered.

Cases Referrred: V.D. Bhanot v. Savita Bhanot, (2012) 3 SCC 183- Relied upon [Para 14]

JUDGMENT

SUDHANSU JYOTI MUKHOPADHAYA, J.

Leave granted. This appeal has been preferred by the appellant-wife against the judgment and order dated 13th December, 2011 passed by the High Court of Judicature at Madras. By the impugned judgment, the High Court dismissed the criminal revision case filed by the appellant and thus affirmed the order of First Appellate Court.

2. The pertinent facts of the case are as follows: The parties to the present dispute are married to each other and the said marriage was solemnized on 17th February, 2000. According to the appellant, she brought 50 sovereign gold ornaments and 1 kg silver articles as stridhan also Rs.10,000/- was given to the respondent. After marriage the appellant lived in her matrimonial house at Padi, Chennai. After four months of the marriage, the respondent husband and his family demanded more dowry in the form of cash and jewels. The appellant was not able to satisfy the said demand. Therefore, she was thrown out of her matrimonial house by the respondent and her in-laws. Another allegation of the appellant is that after sending out the appellant from her matrimonial house, the respondent-husband intended to marry again. On hearing such rumour, the appellant filed petition under Section 9 of the Hindu Marriage Act, 1955 (hereinafter referred to as, "the HM Act, 1955") bearing no. H.M.O.P. No. 216 of 2001 before the Principal Subordinate Judge, Chengalpattu, Tamil Nadu for restitution of conjugal rights.

The respondent-husband on the other hand filed H.M.O.P. No. 123 of 2002 under Section 13(1) (ia) and (iv) of the HMA Act, 1955 before the Principal Subordinate Judge, Chengalpattu, Tamil Nadu for dissolution of marriage between the appellant and the respondent . On 5th April, 2006, the learned Principal Subordinate Judge, Chengalpattu, Tamil Nadu dismissed the petition for dissolution of marriage filed by the respondent-husband and allowed the petition for restitution of conjugal rights filed by the appellant-wife with the condition that the appellant should not insist for setting up of a separate residence by leaving the matrimonial home of the respondent.

In the year 2008, the appellant filed Crl. M.P. No. 2421 of 2008 before learned XIII Metropolitan Magistrate, Egmore, Chennai against the respondent seeking relief under Section 19, 20 and 22 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as, "the PWD Act, 2005"). The learned XIII Metropolitan Magistrate, Egmore, Chennai partly allowed the same and directed the respondent to give maintenance of Rs.2,000/- per month to the appellant to meet out her medical expenses, food, shelter and clothing expenses. The Magistrate Court's held that the appellant is in domestic relationship with the respondent and the appellant being the wife of the respondent has a right to reside in the shared household. The officer in charge of the nearest Police Station was directed to give protection to the appellant for implementation of the residence orders and was also directed to assist in the implementation of the protection order.

The respondent-husband being aggrieved preferred Criminal Appeal No. 339 of 2008 before the Sessions Court (Vth Additional Judge) at Chennai. In the meantime, as per the order passed by the XIII Metropolitan Magistrate, Egmore, Chennai the appellant-wife went to her matrimonial house for staying with the respondent-husband house along with Protection Officer. However, the respondent did not obey

the order of the Court and refused to allow the appellant-wife to enter the house and locked the door from outside and went out.

On 22nd December, 2008, the appellant filed a complaint against the respondent for not obeying the order of the learned XIII Metropolitan Magistrate, Egmore, Chennai and the same was registered in Ambatur T3 Korattur Police Station as FIR No. 947 of 2008 under Section 31,32 and 74 of the PWD Act, 2005. The case was committed to the learned XIII Metropolitan Magistrate, Egmore, Chennai and registered as Criminal Miscellaneous Petition No. 636 of 2011.

In the meantime, the Criminal Appeal No. 339 of 2008 filed by the respondent-husband was partly allowed by the Sessions Court (Vth Addl. Judge) at Chennai on 21st October, 2010. Sessions Courts by the said order set aside the order prohibiting the respondent-husband from committing acts of domestic violence as against the appellant-wife by not allowing her to live in the shared household and the order directing the respondent to reside in the house owned by respondent's mother and upheld the order granting maintenance of Rs.2,000/- per month in favour of the appellant- wife by the respondent-husband.

3. Aggrieved by the aforesaid order, the appellant-wife filed Crl. R.C. No. 1321 of 2010 before the High Court. A criminal miscellaneous petition no.1 of 2010 was also filed in the said revision application. On 23rd December, 2010, the High Court granted an interim stay to the above order passed by the learned Sessions Court (Vth Addl. Judge) at Chennai.

4. In the meantime, wihile the matter was pending before the High Court, the learned XIII Metropolitan Magistrate, Egmore, Chennai passed an order on 24th February, 2011 in Crl. Misc. Petition No. 636 of 2011 (arising out of FIR No. 947 of 2008) and directed the SHO, Ambatur T3 Korattur Police Station to break the door of the respondent's house in the presence of the Revenue Inspector and make accommodation for the appellant with further direction to the SHO to inquire about the belongings in the respondent's house in presence of the family members of the respondent with further direction to submit the report to the respondent as well as the Protection Officer. The respondent-husband thereafter filed a petition for vacating the order of stay dated 23rd December, 2010 and vide order dated 9th March, 2011 the High Court vacated the order of stay and made it clear that appellant-wife can go and reside with her husband in his rental residence at Guduvancherry. As the order aforesaid was not complied with by the respondent-husband the appellant-wife filed Contempt Petition No. 958 of 2011 against the respondent-husband for wantonly disobeying the order dated 9th March, 2011 passed by the High Court.

5. The High Court closed the contempt petition vide order dated 21st July, 2011 with following observation:

"In view of the categorical submission made by the Ld. Counsel for the respondent as well as the statement made by the respondent herein by appearing before this court and stating that the respondent undertakes not to prevent the contempt petitioner from entering inside the premises at Door No. 80, Karpagambal Nagar, Nadivaram, Guduvancherry, Chennai and the contempt petitioner also agreed to occupy and stay in the above said premises from 01.08.2011, the contempt petition is hereby closed."

6. Thereafter the appellant made representation before Sub Inspector of Police, Guduvancherry and stated that the respondent-husband has given false address and

in order to comply with the court's order, the appellant went to the address and on enquiry came to know that the address was a bogus one. The appellant thereby submitted a complaint and requested the police to enquire from the respondent to ascertain the real facts so as to ensure that the court's order is executed in its letter and spirit.

7. When the matter was pending before the Police, the High Court decided the criminal miscellaneous case filed by the appellant and held that although the offending acts of the respondent could be construed as offences under other enactments it could not be construed as acts of domestic violence under the PWD Act, 2005 until the Act came into force. The High Court dismissed the revisional application.

8. From the bare perusal of the impugned judgment passed by the High Court, we find that the High Court framed the following question:

"4. The primary question that arises for consideration is wihether acts committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and which fall within the definition of the term 'Domestic Violence' as informed in the Act could form the basis of an action."

9. The High Court after taking into consideration the stand taken by the parties held as follows:

"5. This court would first concern itself with whether acts which now constitute domestic violence but committed prior to the coming into force of the Act would form a basis of an action thereunder. With due respect to the authorities above cited, this court would inform that the fundamental issue stands unaddressed. The Act cam into force on 2005. It cannot be disputed that several wrongful actions which might have amounted to offences such as cruelty and demand for dowry cannot have taken the description of "Domestic violence" till such time the act came into force. In other words the offending acts could have been construed as offences under other enactments but could not have been construed as acts of 'Domestic Violence' until the act came into force. Therefore, what was not 'Domestic violence' as defined in the Act till the Act came into force could not have formed the basis of an action. Ignorance of law is no excuse but the application of this maxim on any date prior to the coming into force of the Act could only have imputed knowledge of offence as subsisted prior to coming into force of the Act. It is true that it is only violation of orders passed under the Act which are made punishable. But those very orders could be passed only in the face of acts of domestic violence. What constituted domestic violence was not known until the passage of the act and could not have formed the basis of a complaint of commission of 'Domestic violence'."

10. From the judgment passed by the Trial Court (XIII Metropolitan Magistrate, Egmore, Chennai dated 5th December, 2008) we find that the appellant filed petition against her husband Babu seeking relief under Sections 18, 19, 20 and 22 under the PWD Act, 2005. Sections 18, 19, 20 and 22 read as follows:

"18. Protection orders.-The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from-

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

19. Residence orders.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

b) directing the respondent to remove himself from the shared household;

c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or sub-

section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs.-(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973(2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub section (1) to the parties to the application and to the in-charge of the police station within the local limits of whose jurisdiction the respondent resides.

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

> 22. *Compensation orders.-ln addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent."*

11. The Trial Court having noticed the provisions of PWD Act, 2005 and the fact that the appellant-wife was prevented by the respondent-husband to enter the matrimonial house even after the order passed by the Subordinate Judge, granted protection under Section 18 with further direction to the respondent-husband under Section 19 to allow the appellant-wife to enter in the shared household and not to disturb the possession of the appellant- wife and to pay maintenance of Rs.2,000/- per month to meet her medical expenses, food and other expenses. However, no compensation or damages was granted in favour of the appellant wife. Notices were issued on the respondent but inspite of service, no affidavit has been filed by the respondent denying the averments made in the petition.
12. Section 2 (g) of PWD Act, 2005 states that •domestic violence" has the same meaning as assigned to it in Section 3 of PWD Act, 2005. Section 3 is the definition of domestic violence. Clause (iv) of Section 3 relates to "economic abuse" which includes prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household as evident from clause (c) of Section 3(iv).
13. In the present case, in view of the fact that even after the order passed by the Subordinate Judge the respondent-husband has not allowed the appellant-wife to reside in the shared household matrimonial house, we hold that there is a continuance of domestic violence committed by the respondent-husband against the appellant-wife. In view of the such continued domestic violence, it is not necessary for the courts below to decide whether the domestic violence is committed prior to the coming into force of the Protection of Women from Domestic Violence Act, 2005 and whether such act falls within the definition of the term 'Domestic Violence' as defined under Section 3 of the PWD Act, 2005.
14. The other issue that whether the conduct of the parties even prior to the commencement of the PWD Act, 2005 could be taken into consideration while passing an order under Sections 18, 19 and 20 fell for consideration before this Court in V.D. Bhanot v. Savita Bhanot (2012) 3 sec 183. In the said case, this Court held as follows:

    "12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Section 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005,"

15. We are of the view that the act of the respondent-husband squarely comes within the ambit of Section 3 of the PWD Act, 2005, which defines "domestic violence" in wide term. The High Court made an apparent error in holding that the conduct

of the parties prior to the coming into force PWD Act, 2005 cannot be taken into consideration while passing an order. This is a case where the respondent-husband has not complied with the order and direction passed by the Trial Court and the Appellate Court. He also misleads the Court by giving wrong statement before the High Court in the contempt petition filed by the appellant-wife. The appellant-wife having being harassed since 2000 is entitled for protection orders and residence orders under Section 18 and 19 of the PWD, Act, 2005 along with the maintenance as allowed by the Trial Court under Section 20 (d) of the PWD, Act, 2005. Apart from these reliefs, she is also entitled for compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by the respondent-husband. Therefore, in addition to the reliefs granted by the courts below, we are of the view that the appellant-wife should be compensated by the respondent-husband. Hence, the respondent is hereby directed to pay compensation and damages to the extent of Rs.5,00,000/- in favour of the appellant-wife.

16. The order passed by the High Court is set aside with a direction to the respondent husband to comply with the orders and directions passed by the courts below with regard to residence and maintenance within three months. The respondent-husband is further directed to pay a sum of Rs.5,00,000/- in favour of the appellant-wife within six months from the date of this order. The appeal is allowed with aforesaid observations and directions. However, there shall be no separate order as to costs.

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[2010] 4 CivCC 7751 [2010] 4 RCR(Cri) 746/ [2010] 4 RCR(Civ) 827/ [2010] 10 SCC 469/ [2011] 0 AIR(SC) 479/ [2010] 7 Supreme 321/ [2010] 4 KLT(SC) 384/ [2010] 173 DLT(SC) 1/ [2010] 4 JCC 2891/ [2010] 4 CCR(SC) 164/ [2010] 2 DMC 677/ [2010] 11JT 3251[2010] 9 UJ 4721/ [2010] 3 BomCR(SC) 764/ [2010] 71AIICriC(SC) 966/ [2011] 1 BBCJ(SC) 104/ [2011] 1 BBCJ(SC) 166/ [2011] 0 CrW 320/ [2011] 1 SCC(Cri) 59/ [2010] 0 Supreme(SC) 49141 2010 (7) Supreme 321

SUPREME COURT OF INDIA

Markandey Katju and T. S. Thakur, JJ.

D. Velusamy-Appellant
versus
D. Patchaiammal -Respondent

Criminal Appeal Nos. 2028-2029_of 2010 [Arising out of Special Leave Petition (Crl.) Nos.2273-2274/2010]
Decided on:21-10-2010

(a) **Judicial Review** - Natural Justice - Lakshmi was not made a party to the proceedings before the courts below and no notice was issued to her- Hence any declaration about her marital status vis-8-vis the appellant is wholly null and void being violative of the rules of natural justice- Without giving a hearing to Lakshmi no such declaration could have validly be given by the Courts below that she had not married the appellant herein since such as a finding would seriously affect her rights.(Para 11)

(b) **Code of Criminal Procedure, 1973- Section 125**- Wife- includes a woman who has been divorced by a husband or who has obtained a divorce from her husband andhas not remarried - there is no scope to include a woman not lawfully married within the expression of 'wife'. (Paras 12 to 14)

(1991) 2 SCC 375:AIR 2005 SC 1809 - Relied upon

(c) **Code of Criminal Procedure, 1973- Section 125**- A divorced wife is treated as a wife but if a person has not even been married, obviously that person could not be divorced - Hence the respondent cannot claim to be the wife of the appellant herein, unless it is established that the appellant was not married to Lakshmi. (Para 15)

(d) The Protection of Women from Domestic Violence Act, 2005 - Section 2(f) - Live in relationship - The expression 'domestic relationship' includes not only the relationship of marriage but also a relationship 'In the nature of marriage' like live-In relationship.(Para 20)

(201Q) 5 SCC 6QQ - Relied upon

(e) Words and Phrases - Palimony - Palimony means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him- However, the law on palimony is till evolving in the USA. (Para 24)

(1976) 18 C3d660; (1976) 18 C3d660; (1986) 224 Cal. Rpr. 186; 195 N.J., 247 (2008) - Referred

(f) The Protection of Women from Domestic Violence Act, 2005 - Section 2(f) - 'Relationship in the nature of marriage' is akin to common law marriage - Not all live

in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act- Requirements for being acceptable stated. (Paras 33 and 34)

Facts of the case:

1. The appellant was married according to the Hindu Customary Rites with one Lakshmi on 25.6.1980. Out of the wedlock with Lakshmi a male child was born, who is now studying in an Engineering college at Ooty. The petitioner is working as a Secondary Teacher in Thevanga Higher Secondary School,Coimbatore.
2. It appears that the respondent-D.Patchaiammal filed a petition under Section 125 Cr.P.C. in the year 2001 in which she alleged that she was married to the appellant herein on 14.9.1986 and since then the appellant herein and she lived together in her father's house for two or three years. It is alleged in the petition that after two or three years the appellant herein left the house of the respondent's father and started living in his native place,but would visit the respondent occasionally.
3. It is alleged that the appellant herein deserted the respondent herein two or three years after marrying her in 1986 and she did not have any kind of livelihood and she is unable to maintain herself whereas the respondent is a Secondary Grade Teacher drawing a salary of Rs.10000/- per month. Hence it was prayed that the respondent (appellant herein) be directed to pay Rs.SOO/- per month as maintenance to the petitioner.
4. The learned Family Court Judge has held that the appellant was married to the respondent and not to Lakshmi. These findings have been upheld by the High Court.

Finding of the Court: Impugned judgments cannot be sustained.

Result : Appealallowed.

CRIMINAL PROCEDURE CODE : S.125, S.125(a)l JUDICIAL REVIEW : .1 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT : S.2(f)

IMPORTANT POINT Not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act.

Cases referred:

Marvin v. Marvin, (1976) 18 C3d660- Referred[Para 24]

Taylor v. Fields, (1986) 224 Cal. Rpr.186- Referred [Para 26] Devaney v. L' Esperance 195 N.J., 247 (2008)- Referred [Para 27]

Savjtaben Somabhat Shatjya v, State of Gyjarat. AIR 2005 SC 1809- Reljed ypon rpara 141

Vimala (K) v, Veeraswamy (K), (1991) 2 sec 375- Re!jed ypon [Para 13J

S. Khushboo v. Kanniammal. C2010l 5 SCC 600- Referred[Para 221

JUDGMENT

Markandey Katju, J.-

1. Leave granted.
2. Heard leamed counsel for the appellant. None has appeared for the respondent although she has been served notice. We had earlier requested Mr. Jayant Shushan, learned Senior counsel to assist us as Amicus Curiae in the case, and we record our appreciation of Mr. Shushan who was of considerable assistance to us.

3. These appeals have been filed against the judgment of the Madras High Court dated 12.10.2009.

4. The appellant herein has alleged that he was married according to the Hindu Customary Rites with one Lakshmi on 25.6.1980. Out of the wedlock with Lakshmi a male child was born, who is now studying in an Engineering college at Ooty. The petitioner is working as a Secondary Teacher in Thevanga Higher Secondary School, Coimbatore.

5. It appears that the respondent-D. Patchaiammal filed a petition under Section 125 Cr. P.C. in the year 2001 before the Family Court at Coimbatore in which she alleged that she was married to the appellant herein on 14.9.1986 and since then the appellant herein and she lived together in her father's house for two or three years. It is alleged in the petition that after two or three years the appellant herein left the house of the respondent's father and started living in his native place, but would visit the respondent occasionally.

6. It is alleged that the appellant herein (respondent in the petition under Section 125 Cr. P.C.) deserted the respondent herein (petitioner in the proceeding under Section 125 Cr.P.C.) two or three years after marrying her in 1986. In her petition under Section 125 Cr.P.C. she alleged that she did not have any kind of livelihood and she is unable to maintain herself whereas the respondent (appellant herein) is a Secondary Grade Teacher drawing a salary of Rs.10000/- per month. Hence it was prayed that the respondent (appellant herein) be directed to pay Rs.500/- per month as maintenance to the petitioner.

7. In both her petition under Section 125 Cr.P.C. as well as in her deposition in the case the respondent has alleged that she was married to the appellant herein on 14.9.1986, and that he left her after two or three years of living together with her in her father's house.

8. Thus it is the own case of the respondent herein that the appellant left her in 1988 or 1989 (i.e. two or three years after the alleged marriage in 1986). Why then was the petition under Section 125 Cr.P.C. filed in the year 2001, i.e. after a delay of about twelve years, shall have to be satisfactorily explained by the respondent. This fact also creates some doubt about the case of the respondent herein.

9. In his counter affidavit filed by the appellant herein before the Family Court, Coimbatore, it was alleged that the respondent (appellant herein) was married to one Lakshmi on 25.6.1980 as per the Hindu Marriage rites and customs and he had a male child, who is studying in C.S.I. Engineering college at Ooty. To prove his marriage with Lakshmi the appellant produced the ration card, voter's identity card of his wife, transfer certificate of his son, discharge certificate of his wife Lakshmi from hospital, photographs of the wedding, etc.

10. The learned Family Court Judge has held by his judgment dated 5.3.2004 that the appellant was married to the respondent and not to Lakshmi. These findings have been upheld by the High Court in the impugned judgment.

11. In our opinion, since Lakshmi was not made a party to the proceedings before the Family Court Judge or before the High Court and no notice was issued to her hence any declaration about her marital status vis-'- vis the appellant is wholly null and void as it will be violative of the rules of natural justice. Without giving a hearing to Lakshmi no such declaration could have validly be given by the Courts below that

she had not married the appellant herein since such as a finding would seriously affect her rights. And if no such declaration could have been given obviously no declaration could validly have been given that the appellant was validly married to the respondent, because if Lakshmi was the wife of the appellant then without divorcing her the appellant could not have validly married the respondent.

12. It may be noted that Section 125 Cr.P.C. provides for giving maintenance to the wife and some other relatives. The word 'wife' has been defined in Explanation (b) to Section 125 (1) of the Cr.P.C.as follows:

    'Wife includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried."

13. In Vimala (K) vs. Veeraswamy (K),1 [C1991l 2 SCC 3751, a three-Judge Bench of this Court held that Section 125 of the Code of 1973 is meant to achieve a social purpose and the object is to prevent vagrancy and destitution. Explaining the meaning of the word 'wife' the Court held:

    "the object is to prevent vagrancy and destitution. It provides a speedy remedy for the supply of food, clothing and shelter to the deserted wife. When an attempt is made by the husband to negative the claim of the neglected wife depicting her as a kept-mistress on the specious plea that he was already married, the court would insist on strict proof of the earlier marriage. The term 'wife' in Section 125 of the Code of Criminal Procedure, includes a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. The woman not having the legal status of a wife is thus brought within the inclusive definition of the term 'wife' consistent with the objective. However, under the law a second wife whose marriage is void on account of the survival of the first marriage is not a legally wedded wife, and is, therefore, not entitled to maintenance under this provision."

14. In a subsequent decision of this Court in Savitaben Somabhat Bhatiya vs. State of Gujarat and others,2 AIR 2005 SC 1809, this Court held that however desirable it may be to take note of the plight of an unfortunate woman, who unwittingly enters into wedlock with a married man, there is no scope to include a woman not lawfully married within the expression of 'wife'. The Bench held that this inadequacy in law can be amended only by the Legislature.

15. Since we have held that the Courts below erred in law in holding that Lakshmi was not married to the appellant (since notice was not issued to her and she was not heard), it cannot be said at this stage that the respondent herein is the wife of the appellant. A divorced wife is treated as a wife for the purpose of Section 125 Cr.P.C. but if a person has not even been married obviously that person could not be divorced. Hence the respondent herein cannot claim to be the wife of the appellant herein, unless it is established that the appellant was not married to Lakshmi.

16. However, the question has also be to be examined from the point of view of The Protection of Women from Domestic Violence Act, 2005. Section 2(a) of the Act states:

    "2(a) "aggrieved person" means 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";

    Section 2(f) states :

"2(f) "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 family";

Section 2(s) states :

"2(s) Mshared household0-means 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."

Section 3(a) states that an act will constitute domestic violence in case it-

"3(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;" or (emphasis supplied)

17. The expression "economic abuse" has been defined to include:

    "(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance". (emphasis supplied)

18. An aggrieved person under the Act can approach the Magistrate under Section 12 for the relief mentioned in Section 12(2). Under Section 20(1)(d) the Magistrate can grant maintenance while disposing of the application under Section 12(1).

19. Section 26(1) provides that the relief mentioned in Section 20 may also be sought in any legal proceeding, before a civil court, family court or a criminal court.

20. Having noted the relevant provisions in The Protection of Women from Domestic Violence Act, 2005, we may point out that the expression 'domestic relationship' includes not only the relationship of marriage but also a relationship 'in the nature of marriage'. The question, therefore, arises as to what is the meaning of the expression 'a relationship in the nature of marriage'. Unfortunately this expression has not been defined in the Act. Since there is no direct decision of this Court on the interpretation of this expression we think it necessary to interpret it because a large number of cases will be coming up before the Courts in our country on this point, and hence an authoritative decision is required.

21. In our opinion Parliament by the aforesaid Act has drawn a distinction between the relationship of marriage and a relationship in the nature of marriage, and has provided that in either case the person who enters into either relationship is entitled to the benefit of the Act.

22. It seems to us that in the aforesaid Act of 2005 Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe. It has been commented upon by this Court in S. Khushboo vs. Kanniammal & Anr.3 (2010) 5 SCC 600 (vide para 31).

23. When a wife is deserted, in most countries the law provides for maintenance to her by her husband, which is called alimony. However, earlier there was no law providing for maintenance to a woman who was having a live-in relationship with a man without being married to him and was then deserted by him.

24. In USA the expression 'palimony' was coined which means grant of maintenance to a woman who has lived for a substantial period of time with a man without marrying him, and is then deserted by him (see 'palimony' on Google). The first decision on palimony was the well known decision of the Califomia Superior Court in Marvin vs. Marvin,4 (1976) 18 C3d660. This case related to the famous film actor Lee Marvin, with whom a lady Michelle lived for many years without marrying him, and was then deserted by him and she claimed palimony. Subsequently in many decisions of the Courts in USA, the concept of palimony has been considered and developed. The US Supreme Court has not given any decision on whether there is a legal right to palimony, but there are several decisions of the Courts in various States in USA. These Courts in USA have taken divergent views, some granting palimony, some denying it altogether, and some granting it on certain conditions. Hence in USA the law is still in a state of evolution on the right to palimony.

25. Although there is no statutory basis for grant of palimony in USA, the Courts there which have granted it have granted it on a contractual basis. Some Courts in USA have held that there must be a written or oral agreement between the man and woman that if they separate the man will give palimony to the woman, while other Courts have held that if a man and woman have lived together for a substantially long period without getting married there would be deemed to be an implied or constructive contract that palimony will be given on their separation.

26. In Taylor vs. Fields,5 (1986) 224 Cal. Rpr. 186 the facts were that the plaintiff Taylor had a relationship with a married man Leo. After Leo died Taylor sued his widow alleging breach of an implied agreement to take care of Taylor financially and she claimed maintenance from the estate of Leo. The Court of Appeals in California held that the relationship alleged by Taylor was nothing more than that of a married man and his mistress. It was held that the alleged contract rested on meretricious consideration and hence was invalid and unenforceable. The Court of Appeals relied on the fact that Taylor did not live together with Leo but only occasionally spent weekends with him. There was no sign of a stable and significant cohabitation between the two.

27. However, the New Jersey Supreme Court in Devaney vs. L' Esperance,6 195 N.J., 247 (2008) held that cohabitation is not necessary to claim palimony, rather "it is the promise to support, expressed or implied, coupled with a marital type relationship, that are indispensable elements to support a valid claim for palimony". A law has now been passed in 2010 by the State legislature of New Jersey that there must be a written agreement between the parties to claim palimony.

28. Thus, there are widely divergent views of the Courts in U.S.A. regarding the right to palimony. Some States like Georgia and Tennessee expressly refuse to recognize palimony agreements.

29. Written palimony contracts are rare, but some US Courts have found implied contracts when a woman has given up her career, has managed the household, and assisted a man in his business for a lengthy period of time. Even when there is no explicit written or oral contract some US Courts have held that the action of the parties make it appear that a constructive or implied contract for grant of palimony existed.

30. However, a meretricious contract exclusively for sexual service is held in all US Courts as invalid and unenforceable.

31. In the case before us we are not called upon to decide whether in our country there can be a valid claim for palimony on the basis of a contract, express or implied, written or oral, since no such case was set up by the respondent in her petition under Section 125 Cr.P.C.

32. Some countries in the world recognize common law marriages. A common law marriage, sometimes called de facto marriage, or informal marriage is recognized in some countries as a marriage though no legally recognized marriage ceremony is performed or civil marriage contract is entered into or the marriage registered in a civil registry (see details on Google).

33. In our opinion a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married:-

    (a) The couple must hold themselves out to society as being akin to spouses.

    (b) They must be of legal age to marry.

    (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.

    (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

    (see 'Common Law Marriage' in Wikipedia on Google) In our opinion a 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2 (s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.

34. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'

35. No doubt the view we are taking would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live in relationship'. The Court in the grab of interpretation cannot change the language of the statute.

36. In feudal society sexual relationship between man and woman outside marriage was totally taboo and regarded with disgust and horror, as depicted in Leo Tolstoy's novel 'Anna Karenina', Gustave Flaubert's novel 'Madame Bovary' and the novels of the great Bengali writer Sharat Chandra Chattopadhyaya.

37. However, Indian society is changing, and this change has been reflected and recognized by Parliament by enacting The Protection of Women from Domestic Violence Act, 2005.

38. Coming back to the facts of the present case, we are of the opinion that the High Court and the leamed Family Court Judge erred in law in holding that the appellant was not married to Lakshmi without even issuing notice to Lakshmi. Hence this finding has to be set aside and the matter remanded to the Family Court which may issue notice to Lakshmi and after hearing her give a fresh finding in accordance with law. The question whether the appellant was married to the respondent or not can, of course, be decided only after the aforesaid finding.

39. There is also no finding in the judgment of the leamed Family Court Judge on the question whether the appellant and respondent had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. In our opinion such findings were essential to decide this case. Hence we set aside the impugned judgment of the High Court and Family Court Judge, Coimbatore and remand the matter to the Family Court Judge to decide the matter afresh in accordance with law and in the light of the observations made above. Appeals allowed.

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[2012] 0 Supreme(SC) 51410/ [2013] 2 JBCJ(SC) 761 [2012] 12 JT 5751 [2013] 1OLR(SC) 891/ [2013] 1 BBCJ(SC) 358/ [2013] 2 SCC 137/ [2013] 0 AIR(SC) 3461 [2013] 0 CrLJ 684/ [2012] 8 Supreme 639/ [2013] 1JLJR(SC) 198

SUPREME COURT OF INDIA

P. SATHASIVAM & RANJAN GOGOI, JJ.

DEOKI PANJHIYARA- Appellant
VERSUS
SHASHI BHUSHAN NARAYAN AZAD & ANR.- Respondents

Criminal Appeal Nos.2032-2033 of 2012 (Arising out of SLP (Criminal) Nos. 8076-8077 of 2010) Decided on: 12-12-2012.

Hindu Marriage Act, 1955 -Section 11 - Parties not obliged to seek declaration of nullity of marriage - Neither prudent nor intended - Declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for - Woman entering into second marriage without annulling first marriage - Mere production of certificate of first marriage issued u/s 13 of the Act is not enough - In absence of such declaration by competent court, woman of second marriage entitled to maintain complaint against second husband.(Para 18)

(2005) 8 sec 351:(2011) 7 sec 616 - Relied upon

AIR 1988 SC 645 - Distinguished impliedly

(2010) 10 sec 469:AIR 1994 sc 853. Referred

Facts of the case:

This case involves interpretation of section 125 Cr. P.C. and section 12 of the Hindu Marriage Act,1955.

Finding of the Court: Nullity of marriage is not automatic.

Result : Appeals allowed.

CRIMINAl. PROCEDURE CODE : S.125, S.198(1)(c)l INDIAN PENAl. CODE : S.494, S.4951 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT : S.12, S.2(f), S.2(i), S.2(s)l SPECIAl. MARRIAGE ACT;S.11,S.13

IMPORTANT POINT Mere certificate of first marriage does not nullify first marriage. Nullity has to be declared.

Cases Referrred:

1. D. Velusamy v. D.Patchaimmal, (2010) 10 SCC 469- Referred [Para 9]
2. S.P. Changalvaraya Naidu v. Jagannath, AIR 1994 SC 853- Referred [Para 11]
3. Yamunabai v. Anantrao, AIR 1988 SC 645- Distinguished impliedly [Para 15]
4. M.M. Malhotra v. Union of India, (2005) 8 SCC 351 -Relied upon [Para 16]
5. A. Subash Babu v. State of Andhra Pradesh, (2011) 7 SCC 616 - Reiied upon [Para 18]

JUDGMENT

Ranjan Gogoi, J.-Leave granted.

2. The appellant, who was married to the respondent in the year 2006, had filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'the DV Act') seeking certain reliefs including

damages and maintenance. During the pendency of the aforesaid application the appellant filed an application for interim maintenance which was granted by the learned trial court on 13.02.2008 at the rate of Rs. 2000/- per month. The order of the learned trial court was affirmed by the learned Sessions Judge on 09.07.2008. As against the aforesaid order, the respondent (husband) filed a Writ Petition before the High Court of Jharkhand.

3. While the Writ Petition was pending, the respondent sought a recall of the order dated 13.02.2008 on the ground that he could subsequently come to know that his marriage with the appellant was void on the ground that at the time of the said marriage the appellant was already married to one Rohit Kumar Mishra. In support, the respondent - husband had placed before the learned trial court the certificate of marriage dated 18.04.2003 between the appellant and the said Rohit Kumar Mishra issued by the competent authority under Section 13 of the Special Marriage Act, 1954 (hereinafter referred to as 'the Act of 1954').

4. The learned trial court by order dated 7.8.2009 rejected the aforesaid application on the ground that notwithstanding the certificate issued under Section 13 of the Act of 1954, proof of existence of the conditions enumerated in Section 15 of the Act would still required to be adduced and only thereafter the certificate issued under Section 13 of the Act can be held to be valid.

5. The aforesaid order dated 07.08.2009 was challenged by the respondent-husband in a revision application before the High Court which was heard alongwith the writ petition filed earlier. Both the cases were disposed of by the impugned common order dated 09.04.2010 holding that the marriage certificate dated 18.04.2003 issued under Section 13 of the Act of 1954 was conclusive proof of the first marriage of the appellant with one Rohit Kumar Mishra which had the effect of rendering the marriage between the appellant and the respondent null and void. Accordingly, it was held that as the appellant was not the legally wedded wife of the respondent she was not entitled to maintenance granted by the learned courts below. It is against the aforesaid order of the High Court that the present appeals have been filed by the appellant -wife.

6. We have heard Shri Gaurav Agarwal, learned counsel for the appellant and Shri Mahesh Tiwari, learned counsel for the respondent.

7. Learned counsel for the appellant has strenuously urged that the allegation of the earlier marriage between the appellant and Rohit Kumar Mishra had been denied by the appellant at all stages and the said fact is not substantiated only by the Marriage Certificate dated 18.04.2003. Even assuming the marriage between the appellant and the respondent to be void, the parties having lived together, a relationship in the nature of marriage had existed which will entitle the appellant to claim and receive maintenance under the DV Act, 2005. Placing the legislative history leading to the aforesaid enactment, it is urged that in the Bill placed before the Parliament i.e. Protection from Domestic Violence Bill, 2002 an "aggrieved person" and "relative" was, initially, defined in the following terms :

"Section 2......... (a) "aggrieved person" means any woman who is or has been relative of the respondent and who alleges to have been subjected to act of domestic violence by the respondent; (b)... (c)... (d).... (e).... (f)... (g)... (h).... (i)"relative" includes any person related by blood, marriage or adoption and living with the respondent."

Thereafter, the different clauses of the Bill were considered by a Parliamentary Standing Committee and recommendations were made that having regard to the object sought to be achieved by the proposed legislation, namely, to protect women from domestic violence and exploitation, clause (2)(i) defining "relative" may be suitably amended to include women who have been living in relationship akin to marriages as well as in marriages considered invalid by law. Pursuant to the aforesaid recommendation made by the Standing Committee, in place of the expression "relative" appearing in clause 2(i) of the Bill, the expression "domestic relationship" came be included in clause (f) of Section 2 of the Act. Learned counsel by referring to the definition of "aggrieved person" and "domestic relationship" as appearing in the DV Act, 2005 has urged that the legislative intent to include women, living in marriages subsequently found to be illegal or even in relationships resembling a marriage, within the protective umbrella of the DV Act is absolutely clear and the same must be given its full effect. It is submitted that having regard to the above even if the marriage of the appellant and the respondent was void on account of the previous marriage of the appellant, the said fact, by itself, will not disentitle the appellant to seek maintenance and other reliefs under the DV Act, 2005.

8. Before proceeding further it will be appropriate to notice, at this stage, the definition of the expressions "aggrieved person" and "domestic relationship" appearing in Section 2(a) and (f) of the DV Act, 2005. "Section 2..... (a) •aggrieved person" means any women 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; (b) ...... (c) ...... d) ...... (e) ...... (f)

   "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 family."

9. Learned counsel, in all fairness, has also drawn the attention of the court to a decision rendered by a coordinate Bench in D. Velusamy vs. D.Patchaimmal [(2010) 10 SCC 4691 wherein this court had occasion to consider the provisions of Section 2(f) of the DV Act to come to the conclusion that a "relationship in the nature of marriage" is akin to a common law marriage which requires, in addition to proof of the fact that parties had lived together in a shared household as defined in Section 2(s) of the DV Act, the following conditions to be satisfied: a) The couple must hold themselves out to society as being akin to spouses. b) They must be of legal age to marry. c) They must be otherwise qualified to enter into a legal marriage, including being unmarried. d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time......." [Para 33]

10. Learned counsel has, however, pointed out that in Velusamy (supra) the issue was with regard to the meaning of expression "wife" as appearing in Section 125 Cr.P.C. and therefore reference to the provisions of Section 2(f) of the DV Act, 2005 and the conclusions recorded were not required for a decision of the issues arising in the case. Additionally, it has been pointed out that while rendering its opinion in the aforesaid case this Court had no occasion to take into account the deliberations of the Parliamentary Standing Committee on the different clauses of Protection of Women from Domestic Violence Bill, 2002. It is also urged that the equation of the expression "relationship in the nature of marriage" with a common law marriage

and the stipulation of the four requirements noticed above is not based on any known or acceptable authority or source of law. Accordingly, it is submitted that the scope and expanse of the expression "relationship in the nature of marriage" is open for consideration by us and, at any rate, a reference of the said question to a larger bench would be justified.

11. Opposing the contentions advanced on behalf of the appellant learned counsel for the respondent - husband has submitted that the object behind insertion of the expression "relationship in the nature of marriage" in Section 2(f) of the DV Act is to protect women who have been misled into marriages by the male spouse by concealment of the factum of the earlier marriage of the husband. The Act is a beneficial piece of legislation which confers protection of different kinds to women who have been exploited or misled into a marriage. Learned counsel has pointed out that in the present case the situation is, however, otherwise. From the marriage certificate dated 18.04.2003 it is clear that the appellant was already married to one Rohit Kumar Mishra which fact was known to her but not to the respondent. The second marriage which is void and also gives rise to a bigamous relationship was voluntarily entered into by the appellant without the knowledge of the husband. Therefore, the appellant is not entitled to any of the benefits under the DV Act. In fact, grant of maintenance in the present case would amount to conferment of benefit and protection to the wrong doer which would go against the avowed object of the Act. Learned counsel has also submitted that the conduct of the appellant makes it clear that she had approached the court by suppressing material facts and with unclean hands which disentitles her to any relief either in law or in equity. In this regard the decision of this court in S.P. Changalvaraya Naidu vs. Jagannath and otherslAIR 1994 sc 8531 has been placed before us.

12. Having considered the submissions advanced by the learned counsels for the contesting parties, we are of the view that the questions raised, namely, whether the appellant and the respondent have/had lived together in a shared household after their marriage on 4.12.2006; if the parties have/had lived together whether the same gives rise to relationship in the nature of marriage within the meaning of Section 2(f) of the DV Act, 2005; whether the decision of this Court in Velusamy (supra) is an authoritative pronouncement on the expression "relationship in the nature of marriage" and if so whether the same would require reference to a larger Bench, may all be premature and the same need not be answered for the present. Instead, in the first instance, the matter may be viewed from the perspective indicated below.

13. The Respondent before us had claimed (before the trial court as well as the High Court) that the marriage between him and the appellant solemnised on 4.12.2006, by performance of rituals in accordance with Hindu Law, was void on account of the previous marriage between the appellant with one Rohit Kumar Mishra. In support thereof, the respondent relied on a marriage certificate dated 18.4.2003 issued under Section 13 of the Special Marriage Act, 1954. Acting solely on the basis of the aforesaid marriage certificate the learned trial court as well as the High Court had proceeded to determine the validity of the marriage between the parties though both the courts were exercising jurisdiction in a proceeding for maintenance. However, till date, the marriage between the parties is yet to be annulled by a competent court. What would be the effect of the above has to be determined first inasmuch as if, under the law, the marriage between the parties still subsists the appellant would continue to be the legally married wife of the respondent so as to be entitled to claim

maintenance and other benefits under the DV Act, 2005. lnfact, in such a situation there will be no occasion for the Court to consider whether the relationship between the parties is in the nature of a marriage.

14. Admittedly, both the appellant and the respondent are governed by the provisions of the Hindu Marriage Act, 1955. Section 11 of the Hindu Marriage Act makes it clear that a marriage solemnised after the commencement of the Act "shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions so specified in clauses (i), (iv) and (v) of Section 5."

15. While considering the provisions of Section 11 of the Hindu Marriage Act, 1955 this Court in Yamunabai v. Anantrao [AIR 1988 SC 645] has taken the view that a marriage covered by Section 11 is void-ipso-jure, that is, void from the very inception. Such a marriage has to be ignored as not existing in law at all. It was further held by this Court that a formal declaration of the nullity of such a marriage is not a mandatory requirement though such an option is available to either of the parties to a marriage. It must, however, be noticed that in Yamunabai (supra) there was no dispute between the parties either as regards the existence or the validity of the first marriage on the basis of which the second marriage was held to be ipso jure void.

16. A similar view has been expressed by this Court in a later decision in M.M. Malhotra v. Union of India £2005 (8) SCC 3511 wherein the view expressed in Yamunabai (supra) was also noticed and reiterated.

17. However, the facts in which the decision in M.M. Malhotra (supra) was rendered would require to be noticed in some detail: The appellant M.M. Malhotra was, inter alia, charged in a departmental proceeding for contracting a plural marriage. In reply to the charge sheet issued it was pointed out that the allegation of plural marriage was not at all tenable inasmuch as in a suit filed by the appellant (M.M. Malhotra) for a declaration that the respondent (wife) was not his wife on account of her previous marriage to one D.J. Basu the said fact i.e. previous marriage was admitted by the wife leading to a declaration of the invalidity of the marriage between the parties. The opinion of this court in M.M. Malhotra (supra) was, therefore, once again rendered in the situation where there was no dispute with regard to the factum of the earlier marriage of one of the spouses.

18. In the present case, however, the appellant in her pleadings had clearly, categorically and consistently denied that she was married to any person known as Rohit Kumar Mishra. The legitimacy, authenticity and genuineness of the marriage certificate dated 18.4.2003 has also been questioned by the appellant. Though Section 11 of the aforesaid Act gives an option to either of the parties to a void marriage to seek a declaration of invalidity/nullity of such marriage, the exercise of such option cannot be understood to be in all situations voluntarily. Situations may arise when recourse to a court for a declaration regarding the nullity of a marriage claimed by one of the spouses to be a void marriage, will have to be insisted upon in departure to the normal rule. This, in our view, is the correct ratio of the decision of this Court in Yamunabai (supra) and M.M. Malhotra (supra). In this regard, we may take note of a recent decision rendered by this Court in A. Subash Babu v. State of Andhra Pradesh & Anr. £2011 (7) sec 6161 while dealing with the question whether the wife of a second marriage contracted during the validity of the first marriage of the husband would be a "person aggrieved" under Section 198 (1)(c) of the Code of Criminal

Procedure to maintain a complaint alleging commission of offences under section 494 and 495 IPC by the husband. The passage extracted below effectively illuminates the issue:

''Though the law specifically does not cast obligation on either party to seek declaration of nullity of marriage and it may be open to the parties even without recourse to the Court to treat the marriage as a nullity, such a course is neither prudent nor intended and a declaration in terms of Section 11 of the Hindu Marriage Act will have to be asked for, for the purpose of precaution and/or record. Therefore, until the declaration contemplated by Section 11 of the Hindu Marriage Act is made by a competent Court, the woman with whom second marriage is solemnized continues to be the wife within the meaning of Section 494 IPC and would be entitled to maintain a complaint against her husband:

19. In the present case, if according to the respondent, the marriage between him and the appellant was void on account of the previous marriage between the appellant and Rohit Kumar Mishra the respondent ought to have obtained the necessary declaration from the competent court in view of the highly contentious questions raised by the appellant on the aforesaid score. It is only upon a declaration of nullity or annulment of the marriage between the parties by a competent court that any consideration of the question whether the parties had lived in a "relationship in the nature of marriage" would be justified. In the absence of any valid decree of nullity or the necessary declaration the court will have to proceed on the footing that the relationship between the parties is one of marriage and not in the nature of marriage. We would also like to emphasise that any determination of the validity of the marriage between the parties could have been made only by a competent court in an appropriate proceeding by and between the parties and in compliance with all other requirements of law. Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005.

20. Our above conclusion would render consideration of any of the other issues raised wholly unnecessary and academic. Such an exercise must surely be avoided.

21. We, accordingly, hold that the interference made by the High Court with the grant of maintenance in favour of the appellant was not at all justified. Accordingly, the order dated 09.04.2010 passed by the High Court is set aside and the present appeals, are allowed.

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[2013] 0 Supreme(SC) 52510/ [2014] 0 AIR(SC) 309/ [2014] 1BBCJ(SC) 551 [2014] 1RLW (SC) 627/ [2014] 1LW(SC) 561/ [2013] 15 JT 70/ [2013] 8 Supreme 1221[2014] 1JLJR(SC) 549

Supreme Court of India

K.S. RADHAKRISHNAN & PINAKI CHANDRA GHOSE, JJ.

Indra Sarma - Appellant
Versus
V.K.V. Sarma- Respondent

Criminal Appeal No. 2009 of 2013 (@Special Leave Petition (Crt.) No. 4895 of 2012) Decided On: 26-11-2013

(a) Words and Phrases - Marriage - Basic civil rights of man/woman - Voluntarily undertaken in formal way - Recognizes the parties as husband and wife -Elements - (1) agreement to be manried (2) living together as husband and wife, (3) holding out to the public that they are manried - "Consortium Omnis Vitae" - Obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other - Consequence - Reciprocal support and responsibility of maintenance of the common household, jointly and severally - Various obligations and duties in the matter of inheritance of property, successionship, etc. flow out of marital relationship,(Para 24)

2000 (3) SA 936 (CC); 2002 (6) SA 1 (CC);2003 (2) SA 198 (CC); 316 US 535 (1942); 198 P.2d 17,20.1 (1948); 388 US 1 (1967); (2013) 2 SCALE 198- Relied upon

(b) Protection of Women from Domestic Violence Act, 2005 - Section 2(f) - Expression "relationship in the nature of manriage" - Means a relationship having some inherent or essential characteristics of a marriage, though not a marriage legally recognized - Marriage continues notwithstanding differences of opinions, marital unrest etc. - Live-in relationship unlike legal marriage is purely an arrangement between the parties -In "the nature of marriage" the party asserting the existence of the relationship must positively prove existence of the identifying characteristics of marital relationship.(Paras 35 and 36)

(c) Protection of Women from Domestic Violence Act, 2005 - Sections 2(f) and 2(a) - Act does not recognise relationship of same sex. (Para 38)

(d) Protection of Women from Domestic Violence Act, 2005 - Section 2(f) - Relationship in "the nature of marriage" -Determination of- Guiding factors- Duration of period; Shared household; Pooling of Resources and Financial Arrangements; Domestic Arrangements; Sexual Relationship; Children; Socialization in Public and Intention and conduct of the parties.(Para 55)

101 Wn.2d 299 (1984); 87 Wn.2d 550 (1976); 93 Wash. App. at 917; [2007] 2 AC 432; [2008] HCA 12; (1983) 52 ALR 128;(1994) 2 SZLR 369 (HC); AIR 2006 SC 2522 - Relied upon

(e) Protection of Women from Domestic Violence Act, 2005 - Section 2(f) - Relationship in "the nature of manriage" - Polygamy, bigamy and/or maintaining an adulterous relationship - Cannot be said to be a relationship "in the nature of manriage" - Appellant had live-in relation with appellant knowing him to be manried - She is a concubine - Not a relation in the nature of marriage - Not entitled to ant relief under

the Act -However long standing relationship as a concubine may need protection. (Paras 56 and 57)

AIR 1927 PC 185; (1978) 3 sec 527;(2008) 4 sec 520:AIR 1952 sc 231- Relied upon

(201Ql10 sec 469: C201Ql5 sec 600:c201312 sec 137 - Referred

Facts of the case:

This case raises the question whether a "live-in relationship" would amount to a "relationship in the nature of marriage" falling within the definition of "domestic relationship" under Section 2(f) of the Protection of Women from Domestic Violence Act,

2005 and the disruption of such a relationship by failure to maintain a women involved in such a relationship amounts to "domestic violence" within the meaning of Section 3 of the DV Act.

Finding of the Court:

Instant live-in relationship is not in the nature of marriage. Any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to "domestic violence" under Section 3 of the DV Act.

Result: Appeal dismissed.

CONSTITUTION OF INDIA: Art.15(3),Art.391 CRIMINAL PROCEDURE CODE :S.125IINDIAN PENAL CODE : S.498(a)l PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT : S.1 2,S.12(1),S.18,S.19,S.2,S.2(f),S.20,S.21,S.22,S.23,S.29,S.3

IMPORTANT POINT Live-in relationship between a married man and unmarried woman, even though for long period, is not a relationship "in the nature of marriage" in terms of the DV Act.

Cases Referrred:

D. Velusamy v. D. Patchaiammal, (2010) 10 SCC 469- Referred [Para 8]

Deoki Panjhiyara v.Shashi Bhushan Narayan Azad, (2013) 2 SCC 137- Referred [Para 10] Dawood v. Minister of Home Affairs, 2000 (3) SA 936 (CC)- Relied upon [Para 24]

Satchwell v. President of the Republic of South Africa, 2002 (6) SA 1 (CC) - Relied upon [Para 25] Du Toit v. Minister of Welfare and Population Development (Lesbian and Gay Equality Project

as Amicus Curiae), 2003 (2) SA 198 (CC)- Relied upon [Para 25] Skinnerv. Oklahoma, 316 US 535 (1942)- Relied upon [Para 30] Perez v. Lippold, 198 P.2d 17, 20.1 (1948)- Relied upon [Para 30] Loving v. Virginia, 388 US 1 (1967)- Relied upon [Para 30]

Pinakin Mahipatray Rawal v. State of Gujarat, (2013) 2 SCALE 198- Relied upon [Para 32] ReMarriage of Lindsay, 101 Wn.2d 299 (1984)- Relied upon [Para 47]

Litham v. Hennessey, 87 Wn.2d 550 (1976)- Relied upon [Para 47] Pennington 93 Wash. App.at 917- Relied upon [Para 47]

Stack v. Dowden, [2007] 2 AC 432- Relied upon [Para 48]

MW v. The Department of Community Services, [2008] HCA 12- Relied upon [Para 49] Lynam v. The Director-General of Social Security, (1983) 52 ALR 128- Relied upon [Para 50] Thompson v. Department of Social Welfare, (1994) 2 SZLR 369 (HC)- Relied upon [Para 51] Lata Singh v.State of U.P., AIR 2006 SC 2522- Relied upon [Para 52]

Andrahennedige Dinohamy v. Wiketunge Liyanapatabendage Balshamy, AIR 1927 PC 185- Relied upon [Para 56]

Badri Prasad v. Director of Consolidation, (1978) 3 SCC 527- Relied upon [Para 56]

Tulsa v. Durghatiya, (2008) 4 SCC 520- Relied upon [Para 56]

Gokal Chand v. Parvin Kumari, AIR 1952 SC 231- Relied upon [Para 56] S. Khushboo v. Kanniammal, (2010) 5 SCC 600- Referred [Para 61]

Judgment:-

K.S. Radhakrishnan, J. Leave granted.

2. Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.

3. We are, in this case, concerned with the question whether a "live-in relationship" would amount to a "relationship in the nature of marriage" falling within the definition of "domestic relationship" under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (for short "the DV Act") and the disruption of such a relationship by failure to maintain a women involved in such a relationship amounts to "domestic violence" within the meaning of Section 3 of the DV Act.

FACTS:

4. Appellant and respondent were working together in a private company. The Respondent, who was working as a Personal Officer of the Company, was a married person having two children and the appellant, aged 33 years, was unmarried. Constant contacts between them developed intimacy and in the year 1992, appellant left the job from the above mentioned Company and started living with the respondent in a shared household. Appellant' s family members, including her father, brother and sister, and also the wife of the respondent, opposed that live-in-relationship. She has also maintained the stand that the respondent, in fact, started a business in her name and that they were earning from that business. After some time, the respondent shifted the business to his residence and continued the business with the help of his son, thereby depriving her right of working and earning. Appellant has also stated that both of them lived together in a shared household and, due to their relationship, appellant became pregnant on three occasions, though all resulted in abortion. Respondent, it was alleged, used to force the appellant to take contraceptive methods to avoid pregnancy. Further, it was also stated that the respondent took a sum of Rs.1,00,000/- from the appellant stating that he would buy a land in her name, but the same was not done. Respondent also took money from the appellant to start a beauty parlour for his wife. Appellant also alleged that, during the year 2006, respondent took a loan of Rs.2,50,000/- from her and had not returned. Further, it was also stated that the respondent, all along, was harassing the appellant by not exposing her as his wife publicly, or permitting to suffix his name after the name of the appellant. Appellant also alleged that the respondent never used to take her anywhere, either to the houses of relatives or friends or functions. Appellant also alleged that the respondent never used to accompany her to the hospital or make joint Bank account, execute documents, etc. Respondent's family constantly opposed their live-in relationship and ultimately forced him to leave the company of the appellant and it was alleged that he left the company of the appellant without maintaining her.

5. Appellant then preferred Criminal Misc. No. 692 of 2007 under Section 12 of the DV

Act before the Ill Additional Chief Metropolitan Magistrate, Bangalore, seeking the following reliefs:

1) Pass a Protection Order under Section 18 of the DV Act prohibiting the respondent from committing any act of domestic violence against the appellant and her relatives, and further prohibiting the respondent from alienating the assets both moveable and immoveable properties owned by the respondent;

2) Pass a residence order under Section 19 of the DV Act and direct the respondent to provide for an independent residence as being provided by the respondent or in the alternative a joint residence along with the respondent where he is residing presently and for the maintenance of Rs.25,000/- per month regularly as being provided earlier or in the alternative to pay the permanent maintenance charges at the rate of Rs.25,000/- per month for the rest of the Iife;

3) Pass a monetary order under Section 20 of the DV Act directing the respondent to pay a sum of Rs.75,000/- towards the operation, pre and post operative medication, tests etc and follow up treatments;

4) Pass a compensation order under Section 22 of the DV Act to a sum of Rs.3,50,000/ towards damages for misusing the funds of the sister of the appellant, mental torture and emotional feelings; and

5) Pass an ex-parte interim order under Section 23 of the DV Act directing the respondent to pay Rs.75,000/- towards the medical expenses and pay the maintenance charges @ Rs. 25,000/- per month as being paid by the respondent earlier.

6. Respondent filed detailed objections to the application stating that it was on sympathetical grounds that he gave shelter to her in a separate house after noticing the fact that she was abandoned by her parents and relatives, especially after the demise of her father. She had also few litigations against her sister for her father's property and she had approached the respondent for moral as well as monetary support since they were working together in a Company. The respondent has admitted that he had cohabited with the appellant since 1993. The fact that he was married and had two children was known to the appellant. Pregnancy of the appellant was terminated with her as well as her brother's consent since she was not maintaining good health. The respondent had also spent large amounts for her medical treatment and the allegation that he had taken money from the appellant was denied. During the month of April, 2007, the respondent had sent a cheque for Rs.2,50,000/ towards her medical expenses, drawn in the name of her sister which was encashed. Further, it was stated, it was for getting further amounts and to tarnish the image of the respondent, the application was preferred under the DV Act. Before the learned Magistrate, appellant examined herself as P.W.1 and gave evidence according to the averments made in the petition. Respondent examined himself as R.W.1. Child Development Project Officer was examined as R.W.2. The learned Magistrate found proof that the parties had lived together for a considerable period of time, for about 18 years, and then the respondent left the company of the appellant without maintaining her. Learned Magistrate took the view that the plea of "domestic violence" had been established, due to the non-maintenance of the appellant and passed the order dated 21.7.2009 directing the respondent to pay an amount of Rs.18,000/ per month towards maintenance from the date of the petition.

7. Respondent, aggrieved by the said order of the learned Magistrate, filed an appeal before the Sessions Court under Section 29 of the DV Act. The Appellate Court, after having noticed that the respondent had admitted the relationship with appellant for over a period of 14 years, took the view that, due to their live-in relationship for a considerable long period, non-maintenance of the appellant would amount to domestic violence within the meaning of Section 3 of the DV Act. The appellate Court also concluded that the appellant has no source of income and that the respondent is legally obliged to maintain her and confirmed the order passed by the learned Magistrate.

8. The respondent took up the matter in appeal before the High Court. It was contended before the High Court that the appellant was aware of the fact that the respondent was a married person having two children, yet she developed a relationship, in spite of the opposition raised by the wife of the respondent and also by the appellant's parents. Reliance was also placed on the judgment of this Court in D. Velusamy v. D. Patchaiammal C201Ql 1Q SCC and submitted that the tests laid down in Velusamy case (supra) had not been satisfied.

   The High Court held that the relationship between the parties would not fall within the ambit of "relationship in the nature of marriage" and the tests laid down in Velusamy case (supra) have not been satisfied. Consequently, the High Court allowed the appeal and set aside the order passed by the Courts below. Aggrieved by the same, this appeal has been preferred.

9. Shri Anish Kumar Gupta, learned counsel appearing for the appellant, submitted that the relationship between the parties continued from 1992 to 2006 and since then, the respondent started avoiding the appellant without maintaining her. Learned counsel submitted that the relationship between them constituted a "relationship in the nature of marriageu within the meaning of Section 2(f) of the DV Act, which takes in every relationship by a man with a woman, sharing household, irrespective of the fact whether the respondent is a married person or not. Learned counsel also submitted that the tests laid down in Velusamy case (supra) have also been satisfied.

10. Ms. Jyotika Kalra, learned amicus curiae, took us elaborately through the provisions of the DV Act as well as the objects and reasons for enacting such a legislation. Learned amicus curiae submitted that the Act is intended to provide for protection of rights of women who are victims of violence of any type occurring in the family. Learned amicus curiae also submitted that the various provisions of the DV Act are intended to achieve the constitutional principles laid down in Article 15(3), reinforced vide Article 39 of the Constitution of India. Learned amicus curiae also made reference to the Malimath Committee report and submitted that a man who marries a second wife, during the subsistence of the first wife, should not escape his liability to maintain his second wife, even under Section 125 CrPC. Learned amicus curiae also referred to a recent judgment of this Court in Deoki Panjhiyara v. Shashi Bhushan Narayan Azad and Another C2013l2 SCC 137 in support of her contention.

11. Mr. Nikhil Majithia, learned counsel appearing for the respondent, made extensive research on the subject and made available valuable materials. Learned counsel referred to several judgments of the Constitutional Courts of South Africa, Australia, New Zealand, Canada, etc. and also referred to parallel legislations on the subject in other countries. Learned counsel submitted that the principle laid down in Velusamy case (supra) has been correctly applied by the High Court and, on facts, appellant

could not establish that their relationship is a "relationship in the nature of marriage- so as to fall within Section 2(f) of the DV Act. Learned counsel also submitted that the parties were not qualified to enter into a legal marriage and the appellant knew that the respondent was a married person. Further, the appellant was not a victim of any fraudulent or bigamous marriage and it was a live-in relationship for mutual benefits, consequently, the High Court was right in holding that there has not been any domestic violence, within the scope of Section 3 of the DV Act entitling the appellant to claim maintenance.

12. We have to examine whether the non maintenance of the appellant in a broken live in-relationship, which is stated to be a relationship not in the nature of a marriage, will amount to "domestic violence" within the definition of Section 3 of the DV Act, enabling the appellant to seek one or more reliefs provided under Section 12 of the DV Act.

13. Before examining the various issues raised in this appeal, which have far reaching consequences with regard to the rights and liabilities of parties indulging in live-in relationship, let us examine the relevant provisions of the DV Act and the impact of those provisions on such relationships.

D.V.ACT

14. The D.V. Act has been enacted to provide a remedy in Civil Law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. The DV Act has been enacted also to provide an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family.

15. "Domestic Violenceu is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination Against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable under Section 498A IPC. The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act.

16. Chapter IV is the heart and soul of the DV Act, which provides various reliefs to a woman who has or has been in domestic relationship with any adult male person and seeks one or more reliefs provided under the Act. The Magistrate, while entertaining an application from an aggrieved person under Section 12 of the DV Act, can grant the following reliefs: 1) Payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for injuries caused by the acts of domestic violence committed by the adult male member, with a prayer for set off against the amount payable under a decree obtained in Court;

2) The Magistrate, under Section 18 of the DV Act, can pass a "protection order" in favour of the aggrieved person and prohibit the respondent from:

a) committing any act of domestic violence;

b) aiding or abetting in the commission of acts of domestic violence;

c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

g) committing any other act as specified in the protection order.

3) The Magistrate, while disposing of an application under Section 12(1) of the DV Act, can pass a "residence order" under Section 19 of the DV Act, in the following manner:

"19. Residence orders.- (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

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(4) An aggrieved person, while filing an application under Section 12(1) of the DV Act, is also entitled, under Section 20 of the DV Act, to get "monetary reliefs" to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but is not limited to,-

"20. Monetary reliefs.- (1) While disposing of an application under sub- section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to,-

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

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The monetary reliefs granted under the above mentioned section shall be adequate, fair, reasonable and consistent with the standard of living to which an aggrieved person is accustomed and the Magistrate has the power to order an appropriate lump sum payment or monthly payments of maintenance.

(5) The Magistrate, under Section 21 of the DV Act, has the power to grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent.

(6) The Magistrate, in addition to other reliefs, under Section 22 of the DV Act, can pass an order directing the respondent 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.

17. Section 26 of the DV Act provides that 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. Further, any relief referred to above may be sought for in addition to and along with any other reliefs that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court. Further, if 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.

18. Section 3 of the DV Act deals with "domestic violence" and reads as under: "3. Definition of domestic violence.- For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it-

(a) harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, hanms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. ExplanationI.-For the purposes of this section,-

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

(ii) "sexual abuse" includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) ''verbal and emotional abuse" includes-

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes-

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;

(b) disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and

(c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Explanation II.- For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes" domestic violence" under this section, the overall facts and circumstances of the case shall be taken into consideration."

19. In order to examine as to whether there has been any act, omission, or commission or conduct so as to constitute domestic violence, it is necessary to examine some of the definition clauses under Section 2 of the DV Act. Section 2(a) of the DV Act defines the expression "aggrieved person" as follows:

    "2(a). "Aggrieved person" means 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."

    Section 2(f) defines the expression "domestic relationship" as follows:

    "2(f). "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 family."

    Section 2(q) defines the expression "respondenf' as follows:

    "2(q). "Respondenf' 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 any relief under this 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."

    Section 2(s) defines the expression "shared household" and reads as follows:

    "2(s). "shared household" means 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."

20. We are, in this case, concerned with a "live-in relationship" which, according to the aggrieved person, is a "relationship in the nature of marriage" and it is that relationship which has been disrupted in the sense that the respondent failed to maintain the aggrieved person, which, according to the appellant, amounts to "domestic violence". The respondent maintained the stand that the relationship between the appellant and the respondent was not a relationship in the nature of marriage but a live-in-relationship simpliciter and the alleged act, omission, commission or conduct of the respondent would not constitute "domestic violence" so as to claim any protection orders under Section 18, 19 or 20 of the DV Act.

21. We have to first examine whether the appellant was involved in a domestic relationship with the respondent. Section 2(f) refers to five categories of relationship, such as, related by consanguinity, marriage, relationship in the nature of marriage,

adoption, family members living together as a joint family, of which we are, in this case, concerned with an alleged relationship in the nature of marriage.

22. Before we examine whether the respondent has committed any act of domestic violence, we have to first examine whether the relationship between them was a "relationship in the nature of marriage" within the definition of Section 3 read with Section 2(f) of the DV Act. Before examining the term "relationship in the nature of marriage", we have to first examine what is "marriage", as understood in law.

MARRIAGE AND MARITAL RELATIONSHIP:

23. Marriage is often described as one of the basic civil rights of man/woman, which is voluntarily undertaken by the parties in public in a formal way, and once concluded, recognizes the parties as husband and wife. Three elements of common law marriage are (1) agreement to be married (2) living together as husband and wife, (3) holding out to the public that they are married. Sharing a common household and duty to live together form part of the 'Consortium Omnis Vitae" which obliges spouses to live together, afford each other reasonable marital privileges and rights and be honest and faithful to each other. One of the most important invariable consequences of marriage is the reciprocal support and the responsibility of maintenance of the common household, jointly and severally. Marriage as an institution has great legal significance and various obligations and duties flow out of marital relationship, as per law, in the matter of inheritance of property, successionship, etc. Marriage, therefore, involves legal requirements of formality, publicity, exclusivity and all the legal consequences flow out of that relationship.

24. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a woman, in which the parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. O'Regan, J., in Dawood and Another v. Minister of Home Affairs and Others 2000 (3) SA 936 (CC) noted as follows:

"Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well.

The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends...."

25. South African Constitutional Court in various judgments recognized the above mentioned principle. In Satchwell v. President of the Republic of South Africa and Another 2002 (6) SA 1 (CC), Du Toil and Another v. Minister of Welfare and Population Development and Others (Lesbian and Gay Equality Project as Amicus Curiae) 2003 (2) SA 198 (CC), the Constitutional Court of South Africa recognized the right "free to marry and to raise family". Section 15(3)(a)(i) of the Constitution of South Africa, in substance makes provision for the recognition of "marriages concluded under the tradition, or a system of religious, personal or family law." Section 9(3) of the Constitution of South Africa reads as follows:

''The State may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."

26. Article 23 of the lnternational Covenant on Civil and Political Rights, 1966 (ICCPR) provides that:

"1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children."

27. Article 16 of the Universal Declaration of Human Rights, 1948 provides that:

"1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at it dissolution.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."

28. Parties in the present case are Hindus by religion and are governed by the Hindu Marriage Act, 1955. The expression "marriage", as stated, is not defined under the Hindu Marriage Act, but the "conditions for a Hindu marriage" are dealt with in Section 5 of the Hindu Marriage Act and which reads as under:

"5. Conditions for a Hindu marriage - A marriage may be solemnized between any two hindus, if the following conditions are fulfilled, namely:-

(i) neither party has a spouse living at the time of the marriage

(ii) at the time of the marriage, neither party-

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity;

(iii) the bridegroom has completed the age of twenty- one years and the bride the age of eighteen years at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two."

29. Section 7 of the Hindu Marriage Act deals with the "Ceremonies for a Hindu marriage" and reads as follows:

"7. Ceremonies for a Hindu marriage. -

(1) A Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the saptapadi (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken."

30. Entering into a marriage, therefore, either through the Hindu Marriage Act or the Special Marriage Act or any other Personal Law, applicable to the parties, is entering into a relationship of "public significance", since marriage being a social institution, many rights and liabilities flow out of that legal relationship. The concept of marriage as a "civil right" has been recognised by various courts all over the world, for example, Skinner v. Oklahoma 316 US 535 (1942), Perez v. Lippold 198 P.2d 17,20.1 (1948), Loving v. Virginia 388 US 1 (1967).

31. We have referred to, in extenso, about the concept of "marriage and marital relationship" to indicate that the law has distinguished between married and unmarried people, which cannot be said to be unfair when we look at the rights and obligations which flow out of the legally wedded marriage. A married couple has to discharge legally various rights and obligations, unlike the case of persons having live-in relationship or, marriage-like relationship or defacto relationship.

32. Married couples who choose to marry are fully cognizant of the legal obligation which arises by the operation of law on solemnization of the marriage and the rights and duties they owe to their children and the family as a whole, unlike the case of persons entering into live-in relationship. This Court in Pinakin Mahipatray Rawal v. State of Gujarat (2013) 2 SCALE 198 held that marital relationship means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their up-bringing, services in the home, support, affection, love, liking and so on.

RELATIONSHIP IN THE NATURE OF MARRIAGE:

33. Modem Indian society through the DV Act recognizes in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood.

Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:

a) Consanguinity

b) Marriage

c) Through a relationship in the nature of marriage

d) Adoption

e) Family members living together as joint family.

34. The definition clause mentions only five categories of relationships which exhausts itself since the expression "means", has been used. When a definition clause is defined to "mean" such and such, the definition is prima facie restrictive and exhaustive. Section 2(f) has not used the expression "include" so as to make the definition exhaustive. It is in that context we have to examine the meaning of the expression "relationship in the nature of marriage".

35. We have already dealt with what is "marriage", "marital relationship" and "marital obligations". Let us now examine the meaning and scope of the expression "relationship in the nature of marriage" which falls within the definition of Section 2(f) of the DV Act. Our concern in this case is of the third enumerated category that is "relationship in the nature of marriage" which means a relationship which has some inherent or essential characteristics of a marriage though not a marriage legally recognized, and, hence, a comparison of both will have to be resorted, to determine whether the relationship in a given case constitutes the characteristics of a regular marriage.

36. Distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the identifying characteristics of that relationship, since the legislature has used the expression "in the nature of'.

37. Reference to certain situations, in which the relationship between an aggrieved person referred to in Section 2(a) and the respondent referred to in Section 2(q) of the DV Act, would or would not amount to a relationship in the nature of marriage, would be apposite. Following are some of the categories of cases which are only illustrative:

a) Domestic relationship between an unmarried adult woman and an unmarried adult male: Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

b) Domestic relationship between an unmarried woman and a married adult male: Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship "in the nature of marriage" so as to fall within the definition of Section 2(f) of the DV Act.

c) Domestic relationship between a married adult woman and an unmarried adult male: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship "in the nature of marriage".

d) Domestic relationship between an unmarried woman unknowingly enters into a relationship with a married adult male: An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in the "nature of marriage", so far as the aggrieved person is concerned.

e) Domestic relationship between same sex partners (Gay and Lesbians):

DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship.

38. Section 2(f) of the DV Act though uses the expression "two persons", the expression "aggrieved person" under Section 2(a) takes in only "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.

39. We should, therefore, while determining whether any act, omission, commission or conduct of the respondent constitutes "domestic violence", have a common sense/ balanced approach, after weighing up the various factors which exist in a particular relationship and then reach a conclusion as to whether a particular relationship is a relationship in the "nature of marriage". Many a times, it is the common intention of the parties to that relationship as to what their relationship is to be, and to involve and as to their respective roles and responsibilities, that primarily governs that relationship. Intention may be expressed or implied and what is relevant is their intention as to matters that are characteristic of a marriage. The expression "relationship in the nature of marriage", of course, cannot be construed in the abstract, we must take it in the context in which it appears and apply the same bearing in mind the purpose and object of the Act as well as the meaning of the expression "in the nature of marriage". Plight of a vulnerable section of women in that relationship needs attention. Many a times, the women are taken advantage of and essential contribution of women in a joint household through labour and emotional support have been lost sight of especially by the women who fall in the categories mentioned in (a) and (d) supra. Women, who fall under categories (b) and (c), stand on a different footing, which

we will deal with later. In the present case, the appellant falls under category (b), referred to in paragraph 37(b) of the Judgment.

40. We have, therefore, come across various permutations and combinations, in such relationships, and to test whether a particular relationship would fall within the expression "relationship in the nature of marriage", certain guiding principles have to be evolved since the expression has not been defined in the Act.

41. Section 2(f) of the DV Act defines "domestic relationship" to mean, inter alia, a relationship between two persons who live or have lived together at such point of time in a shared household, through a relationship in the nature of marriage. The expression "relationship in the nature of marriage" is also described as defacto relationship, marriage -like relationship, cohabitation, couple relationship, meretricious relationship (now known as committed intimate relationship) etc.

42. Courts and legislatures of various countries now began to think that denying certain benefits to a certain class of persons on the basis of their marital status is unjust where the need of those benefits is felt by both unmarried and married cohabitants. Courts in various countries have extended certain benefits to heterosexual unmarried cohabitants. Legislatures too, of late, through legislations started giving benefits to heterosexual cohabitants.

43. In U.K. through the Civil Partnership Act, 2004, the rights of even the same-sex couple have been recognized. Family Law Act, 1996, through the Chapter IV, titled 'Family Homes and Domestic Violence', cohabitants can seek reliefs if there is domestic violence. Canada has also enacted the Domestic Violence Intervention Act, 2001. In USA, the violence against woman is a crime with far-reaching consequences under the Violence Against Women Act, 1994.

44. The Interpretation Act, 1984 (Australia) has laid down certain indicators to determine the meaning of "de facto relationship", which are as follows:

"13A. De facto relationship and de facto partner, references to

(1) A reference in a written law to a de facto relationship shall be construed as a reference to a relationship (other than a legal marriage) between 2 persons who live together in a marriage-like relationship.

(2) The following factors are indicators of whether or not a de facto relationship exists between 2 persons, but are not essential -

(a) the length of the relationship between them;

(b) whether the 2 persons have resided together;

(c) the nature and extent of common residence;

(d) whether there is, or has been, a sexual relationship between them;

(e) the degree of financial dependence or interdependence, and any arrangements for financial support, between them;

(f) the ownership, use and acquisition of their property (including property they own individually);

(g) the degree of mutual commitment by them to a shared life;

(h) whether they care for and support children;

(i) the reputation, and public aspects, of the relationship between them.

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45. The Domestic and Family Violence Protection Act, 2012 (Queensland) has defined the expression "couple relationship" to mean as follows":

"18. Meaning of couple relationship

1) XXX XXX XXX
2) In deciding whether a couple relationship exists, a court may have regard to the following-
    a) the circumstances of the relationship between the persons, including, for example-
        (i) the degree of trust between the persons; and
        (ii) the level of each person's dependence on, and commitment to, the other person;
    b) the length of time for which the relationship has existed or did exist;
    c) the frequency of contact between the persons;
    d) the degree of intimacy between the persons.
3) Without limiting sub-section (2), the court may consider the following factors in deciding whether a couple relationship exists-
    a) Whether the trust, dependence or commitment is or was of the same level;
    b) Whether one of the persons is or was financially dependent on the other;
    c) Whether the persons jointly own or owned any property;
    d) Whether the persons have or had joint bank accounts;
    e) Whether the relationship involves or involved a relationship of a sexual nature;
    f) Whether the relationship is or was exclusive.
4) A couple relationship may exist even if the court makes a negative finding in relation to any or all of the factors mentioned in subsection (3).
5) A couple relationship may exist between two persons whether the persons are of the same or a different gender.
6) A couple relationship does not exist merely because two persons date or dated each other on a number of occasions."

46. The Property (Relationships) Act, 1984 of North South Wales, Australia also provides for some guidelines with regard to the meaning and content of the expression "de facto relationship", which reads as follows:

"4 De facto relationships

(1) For the purposes of this Act, a de facto relationship is a relationship between two adult persons:
    (a) who live together as a couple, and
    (b) who are not married to one another or related by family.

(2) In determining whether two persons are in a de facto relationship, all the circumstances of the relationship are to be taken into account, including such of the following matters as may be relevant in a particular case:

(a) the duration of the relationship,

(b) the nature and extent of common residence,

(c) whether or not a sexual relationship exists,

(d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties,

(e) the ownership, use and acquisition of property,

(f) the degree of mutual commitment to a shared life, (g) the care and support of children,

(h) the performance of household duties,

(i) the reputation and public aspects of the relationship.

(3) No finding in respect of any of the matters mentioned in subsection (2) (a)-(i), or in respect of any combination of them, is to be regarded as necessary for the existence of a de facto relationship, and a court determining whether such a relationship exists is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.

(4) Except as provided by section 6, a reference in this Act to a party to a de facto relationship includes a reference to a person who, whether before or after the commencement of this subsection, was a party to such a relationship."

47. "In Re Marriage of Lindsay, 101 Wn.2d 299 (1984), Litham v. Hennessey 87 Wn.2d 550 (1976), Pennington 93 Wash.App. at 917, the Courts in United States took the view that the relevant factors establishing a meretricious relationship include continuous cohabitation, duration of the relationship, purpose of the relationship, and the pooling of resources and services for joint projects. The Courts also ruled that a relationship need not be "long term" to be characterized as meretricious relationship. While a long term relationship is not a threshold requirement, duration is a significant factor. Further, the Court also noticed that a short term relationship may be characterized as a meretricious, but a number of other important factors must be present.

48. In Stack v. Dowden [2007] 2 AC 432, Baroness Hale of Richmond said:

"Cohabitation comes in many different shapes and sizes. People embarking on their first serious relationship more commonly cohabit than marry. Many of these relationships may be quite short-lived and childless. But most people these days cohabit before marriage..... So many couples are cohabiting with a view to marriage at some later date - as long ago as 1998 the British Household Panel Survey found that 75% of current cohabitants expected to marry, although only a third had firm plans: John Ermisch, Personal Relationships and Marriage Expectations (2000) Working Papers of the Institute of Social and Economic Research: Paper 2000-27. Cohabitation is much more likely to end in separation than is marriage, and cohabitations which end in separation tend to last for a shorter time than marriages which end in divorce. But increasing numbers of couples cohabit for long periods without marrying and their reasons for doing so vary from conscious rejection of

marriage as a legal institution to regarding themselves 'as good as married' anyway: Law Commission, Consultation Paper No 179, Part 2, para 2.45."

49. In MW v. The Department of Community Services [2008] HCA 12, Gleeson, CJ, made the following observations:

"Finn J was correct to stress the difference between living together and living together 'as a couple in a relationship in the nature of marriage or civil union'. The relationship between two people who live together, even though it is a sexual relationship, may, or may not, be a relationship in the nature of marriage or civil union. One consequence of relationships of the former kind becoming commonplace is that it may now be more difficult, rather than easier, to infer that they have the nature of marriage or civil union, at least where the care and upbringing of children are not involved."

50. In Lynam v. The Director-General of Social Security (1983) 52 ALR 128, the Court considered whether a man and a woman living together 'as husband and wife on a bona fide domestic basis' and Fitzgerald, J. said:

"Each element of a relationship draws its colour and its significance from the other elements, some of which may point in one direction and some in the other. What must be looked at is the composite picture. Any attempt to isolate individual factors and to attribute to them relative degrees of materiality or importance involves a denial of common experience and will almost inevitably be productive of error. The endless scope for differences in human attitudes and activities means that there will be an almost infinite variety of combinations of circumstances which may fall for consideration. In any particular case, it will be a question of fact and degree, a jury question, whether a relationship between two unrelated persons of the opposite sex meets the statutory test."

51. Tipping, J. in Thompson v. Department of Social Welfare (1994) 2 SZLR 369 (HC), listed few characteristics which are relevant to determine relationship in the nature of marriage as follows:

"(1) Whether and how frequently the parties live in the same house.

(2) Whether the parties have a sexual relationship.

(3) Whether the parties give each other emotional support and companionship.

(4) Whether the parties socialize together or attend activities together as a couple.

(5) Whether and to what extent the parties share the responsibility for bringing up and supporting any relevant children.

(6) Whether the parties share household and other domestic tasks.

(7) Whether the parties share costs and other financial responsibilities by the pooling of resources or otherwise.

(8) Whether the parties run a common household, even if one or other partner is absent for periods of time.

(9) Whether the parties go on holiday together.

(10) Whether the parties conduct themselves towards, and are treated by friends, relations and others as if they were a married couple."

52. Live-in relationship, as such, as already indicated, is a relationship which has not been socially accepted in India, unlike many other countries. In Lata Singh v. State of U.P. [AIR 2006 sc 2527J it was observed that a live-in relationship between two

consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral. However, in order to provide a remedy in Civil Law for protection of women, from being victims of such relationship, and to prevent the occurrence of domestic violence in the society, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related by consanguinity, marriages etc.

We have few other legislations also where reliefs have been provided to woman placed in certain vulnerable situations.

53. Section 125 Cr.P.C., of course, provides for maintenance of a destitute wife and Section 498A IPC is related to mental cruelty inflicted on women by her husband and in-laws. Section 304-B IPC deals with the cases relating to dowry death. The Dowry Prohibition Act, 1961 was enacted to deal with the cases of dowry demands by the husband and family members.

    The Hindu Adoptions and Maintenance Act, 1956 provides for grant of maintenance to a legally wedded Hindu wife, and also deals with rules for adoption. The Hindu Marriage Act, 1955 refers to the provisions dealing with solemnization of marriage also deals with the provisions for divorce.

    For the first time, through, the DV Act, the Parliament has recognized a •relationship in the nature of marriage" and not a live-in relationship simplicitor.

54. We have already stated, when we examine whether a relationship will fall within the expression nrelationship in the nature of marriageu within the meaning of Section 2(f) of the DV Act, we should have a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. We cannot isolate individual factors, because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the tests judicially evolved.

55. We may, on the basis of above discussion cull out some guidelines for testing under what circumstances, a live-in relationship will fall within the expression nrelationship in the nature of marriage under Section 2(f) of the DV Act. The guidelines, of course, are not exhaustive, but will definitely give some insight to such relationships.

    1) Duration of period of relationship

       Section 2(f) of the DV Act has used the expression Mat any point of time", which means a reasonable period of time to maintain and continue a relationship which may vary from case to case, depending upon the fact situation.

    2) Shared household

       The expression has been defined under Section 2(s) of the DV Act and, hence, need no further elaboration.

    3) Pooling of Resources and Financial Arrangements

       Supporting each other, or any one of them, financially, sharing bank accounts, acquiring immovable properties in joint names or in the name of the woman, long term investments in business, shares in separate and joint names, so as to have a long standing relationship, may be a guiding factor.

    4) Domestic Arrangements

Entrusting the responsibility, especially on the woman to run the home, do the household activities like cleaning, cooking, maintaining or upkeeping the house, etc. is an indication of a relationship in the nature of marriage.

5) Sexual Relationship

Marriage like relationship refers to sexual relationship, not just for pleasure, but for emotional and intimate relationship, for procreation of children, so as to give emotional support, companionship and also material affection, caring etc.

6) Children

Having children is a strong indication of a relationship in the nature of marriage. Parties, therefore, intend to have a long standing relationship. Sharing the responsibility for bringing up and supporting them is also a strong indication.

7) Socialization in Public

Holding out to the public and socializing with friends, relations and others, as if they are husband and wife is a strong circumstance to hold the relationship is in the nature of marriage.

8) Intention and conduct of the parties

Common intention of parties as to what their relationship is to be and to involve, and as to their respective roles and responsibilities, primarily determines the nature of that relationship.

STATUS OF THE APPELLANT

56. Appellant, admittedly, entered into a live-in-relationship with the respondent knowing that he was married person, with wife and two children, hence, the generic proposition laid down by the Privy Council in Andrahennedige Dinohamy v. Wiketunge Liyanapatabendage Balshamy, AIR 1927 PC 185, that where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and, hence, the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. A concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogamous in character. Reference may also be made to the judgments of this Court in Badri Prasad v. Director of Consolidation 1978 C3lSCC 527 and Tulsa v. Durghatiya 2008 (4lSCC 520. In Gokal Chand v. Parvin Kumari AIR 1952 SC 231 this Court held that the continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabition is a rebuttable one and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them. Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another and/or maintaining an adulterous relationship that is having cannot be said to be a relationship in the nature of marriage.

57. We may note, in the instant case, there is no necessity to rebut the presumption, since the appellant was aware that the respondent was a married person even before the commencement of their relationship, hence the status of the appellant is

that of a concubine or a mistress, who cannot enter into relationship in the nature of a marriage. Long standing relationship as a concubine, though not a relationship in the nature of a marriage, of course, may at times, deserves protection because that woman might not be financially independent, but we are afraid that DV Act does not take care of such relationships which may perhaps call for an amendment of the definition of Section 2(f) of the DV Act, which is restrictive and exhaustive.

58. Velusamy case (supra) stated that instances are many where married person maintain and support such types of women, either for sexual pleasure or sometimes for emotional support. Woman, a party to that relationship does suffer social disadvantages and prejudices, and historically, such a person has been regarded as less worthy than the married woman. Concubine suffers social ostracism through the denial of status and benefits, who cannot, of course, enter into a relationship in the nature of marriage.

59. We cannot, however, lose sight of the fact that inequities do exist in such relationships and on breaking down such relationship, the woman invariably is the sufferer. Law of Constructive Trust developed as a means of recognizing the contributions, both pecuniary and non-pecuniary, perhaps comes to their aid in such situations, which may remain as a recourse for such a woman who find herself unfairly disadvantaged. Unfortunately, there is no express statutory provision to regulate such types of live-in relationships upon termination or disruption since those relationships are not in the nature of marriage. We can also come across situations where the parties entering into live-in-relationship and due to their joint efforts or otherwise acquiring properties, rearing children, etc. and disputes may also arise when one of the parties dies intestate.

60. American Jurisprudence, Second Edition, Vol. 24 (2008) speaks of Rights and Remedies of property accumulated by man and woman living together in illicit relations or under void marriage, which reads as under:

"Although the courts have recognized the property rights of persons cohabiting without benefit of marriage, these rights are not based on the equitable distribution provisions of the marriage and divorce laws because the judicial recognition of mutual property rights between unmarried cohabitants would violate the policy of the state to strengthen and preserve the integrity of marriage, as demonstrated by its abolition of common-law marriage."

61. Such relationship, it may be noted, may endure for a long time and can result pattern of dependency and vulnerability, and increasing number of such relationships, calls for adequate and effective protection, especially to the woman and children born out of that live in-relationship. Legislature, of course, cannot promote pre-marital sex, though, at times, such relationships are intensively personal and people may express their opinion, for and against. SeeS. Khushboo v. Kanniammal and another (2010) 5 SCC 600.

62. Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children, born out of such kinds of relationships be protected, though those types of relationship might not be a relationship in the nature of a marriage.

63. We may now consider whether the tests, we have laid down, have been satisfied in the instant case. We have found that the appellant was not ignorant of the fact that

the respondent was a married person with wife and two children, hence, was party to an adulterous and bigamous relationship. Admittedly, the relationship between the appellant and respondent was opposed by the wife of the respondent, so also by the parents of the appellant and her brother and sister and they knew that they could not have entered into a legal marriage or maintained a relationship in the nature of marriage. Parties never entertained any intention to rear children and on three occasions the pregnancy was terminated. Having children is a strong circumstance to indicate a relationship in the nature of marriage. No evidence has been adduced to show that the parties gave each other mutual support and companionship. No material has been produced to show that the parties have ever projected or conducted themselves as husband and wife and treated by friends, relatives and others, as if they are a married couple. On the other hand, it is the specific case of the appellant that the respondent had never held out to the public that she was his wife. No evidence of socialization in public has been produced. There is nothing to show that there was pooling of resources or financial arrangements between them. On the other hand, it is the specific case of the appellant that the respondent had never opened any joint account or executed any document in the joint name. Further, it was also submitted that the respondent never permitted to suffix his name after the name of the appellant. No evidence is forthcoming, in this case, to show that the respondent had caused any harm or injuries or endangered the health, safely, life, limb or well-being, or caused any physical or sexual abuse on the appellant, except that he did not maintain her or continued with the relationship.

ALIENATION OF AFFECTION

64. Appellant had entered into this relationship knowing well that the respondent was a married person and encouraged bigamous relationship. By entering into such a relationship, the appellant has committed an intentional tort, i.e. interference in the marital relationship with intentionally alienating respondent from his family, i.e. his wife and children. If the case set up by the appellant is accepted, we have to conclude that there has been an attempt on the part of the appellant to alienate respondent from his family, resulting in loss of marital relationship, companionship, assistance, loss of consortium etc., so far as the legally wedded wife and children of the respondent are concerned, who resisted the relationship from the very inception. Marriage and family are social institutions of vital importance. Alienation of affection, in that context, is an intentional tort, as held by this Court in Pinakin Mahipatray Rawal case (supra), which gives a cause of action to the wife and children of the respondent to sue the appellant for alienating the husband/father from the company of his wife/children, knowing fully well they are legally wedded wife/children of the respondent..

65. We are, therefore, of the view that the appellant, having been fully aware of the fact that the respondent was a married person, could not have entered into a live-in relationship in the nature of marriage. All live-in-relationships are not relationships in the nature of marriage. Appellant's and the respondent's relationship is, therefore, not a "relationship in the nature of marriage" because it has no inherent or essential characteristic of a marriage, but a relationship other than "in the nature of marriage" and the appellant's status is lower than the status of a wife and that relationship would not fall within the definition of "domestic relationship" under Section 2(f) of the DV Act. If we hold that the relationship between the appellant and the respondent is a relationship in the nature of a marriage, we will be doing an injustice to the

legally wedded wife and children who opposed that relationship. Consequently, any act, omission or commission or conduct of the respondent in connection with that type of relationship, would not amount to "domestic violence" under Section 3 of the DV Act.

66. We have, on facts, found that the appellant's status was that of a mistress, who is in distress, a survivor of a live-in relationship which is of serious concern, especially when such persons are poor and illiterate, in the event of which vulnerability is more pronounced, which is a societal reality. Children born out of such relationship also suffer most which calls for bringing in remedial measures by the Parliament, through proper legislation.

67. We are conscious of the fact that if any direction is given to the respondent to pay maintenance or monetary consideration to the appellant, that would be at the cost of the legally wedded wife and children of the respondent, especially when they had opposed that relationship and have a cause of action against the appellant for alienating the companionship and affection of the husband/parent which is an intentional tort.

68. We, therefore, find no reason to interfere with the judgment of the High Court and the appeal is accordingly dismissed.

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RFA (OS).No. 24 of 2012, C.M. Appl. Nos. 4236 of 2012, 4237 of 2012 & 5451 of 2013 [2014] 0 Supreme(Del) 37773/ [2014] 207 DLT 78

High Court of Delhi

THE HONOURABLE MR. JUSTICES. RAVINDRA BHAT &
THE HONOURABLE MR. JUSTICE NAJMIWAZIRI

Mrs. Preeti Satija
Versus
Mrs. Raj Kumari & Another

Decided On: 15-01-2014

CIVIL PROCEDURE CODE : 0.12 R.61 CRIMINAL PROCEDURE CODE : 8.1251 DOMESTIC VIOLENCE ACT : 8.12, 8.12(1), 8.17, 8.18, 8.19, S.2(q)l INDIAN PENAL CODE: 8.406, S. 498(a)

Cases Referrred:
Eveneet Singh v. Prashant Chaudhari, 177(2011) DLT 124
Neetu Mittal v. Kanta Mittal, (2008) DLT 691
Gilbert v. Smith, 1875-76 (2) Ch 686,
Western Coalfields Ltd. v. M/s Swati lndustires, AIR 2003 Born 369
Uttam Singh Duggal & Co. v. United Bank of India & Ors 2000 (7) SCC 120
Jeevan Diesel & Electricals Limited v. Jasbir Singh Chadha & Another, (2010) 6 SCC 601
Shumita Didi Sandhu v.Sanjay Singh Sandhu, 2007 (96) DRJ 697
S.R. Batra &Anrv.Smt. Taruna Batra, (2007) 3 SCC169

Judgment:

S. Ravindra Bhat, J.

1. The defendant appeals the judgment and order of a learned Single Judge, who decreed the suit preferred by the respondent- plaintiff, her mother in law, on admission, by invoking Order XII Rule 6, Code of Civil Procedure (CPC). The plaintiff had sought a decree for possession/eviction of the defendanUdaughter-in-law.

2. The plaintiff had filed the suit for possession, permanent injunction and mesne profits against the defendants, her son and mother in-law, in respect of a portion of property bearing No.2245, Hudson Lane, GTB Nagar, Kingsway Camp, Delhi - 110 009 (hereafter referred to as Mthe suit property"). The first defendant is the plaintiff's daughter-in-law and wife of her disowned son. The son was also arrayed as the second defendant. The suit property belonged to the plaintiff's husband (Shri Tek Chand), who he died on 30.06.2008 leaving behind a registered Will dated 20.11.2006 by which he bequeathed the suit property to her. The plaintiff alleged that after her husband's death, she became the sole and absolute owner of that property. The plaintiff claimed that the back portion of the suit property consisting of one bedroom, a bathroom and a small kitchen is in occupation of the defendants. She alleged that since the relationship between her and the defendants became estranged, she wanted them to vacate the property. During the pendency of the suit, the plaintiff filed an application alleging her entitlement to a decree on alleged admission.

3. The appellant's position in her reply to the application for decree on admission was

that the plaintiff was not the absolute owner of the suit property as the Will had not been granted probate and was as yet untested in law and that without it being probated, the Will cannot come into force.

4. The leamed Single Judge was of the opinion that since the defendant/appellant had not disputed the due execution of the Will, and had merely contested that it had no legal effect because it had not been probated, there was in effect an admission. Further, he concluded that it is inessential to seek a probate, and thus, the Will, being admitted, remains operative between the parties. The impugned order also mentioned the two notices issued on behalf of the plaintiff to the defendants and her allegation that they were harassing her and continuing to live in the suit premises. The Court also noticed that the appellant had filed a suit, before the Civil Judge, North West, Rohini Courts, Delhi (Suit No.16/2010) which is still pending. Importantly, the Single Judge was also aware of the fact that the appellant had relied on provisions of the Protection of Women from Domestic Violence Act, 2005 (hereafter "2005 Act").

5. In the impugned judgment, the leamed Single Judge rejected the arguments of the appellant with respect to applicability of the provisions of the 2005 Act. It was held that the suit property could not be considered to be Mshared household". In view of this conclusion, the Single Judge decreed the suit in part, holding that the defendant was liable to be evicted.

6. The appellant argued that the leamed Single Judge failed to consider that there was no unambiguous admission of the kind that warranted exercise of discretion under Order 12, Rule 6. In this regard, it was contended that the written statement had alleged collusion between the plaintiff and her son, the second defendant; it had not admitted due execution of the Will and stated that such circumstances would have to be tested in probate proceedings. In these circumstances, the court should have not exercised its discretion in granting a decree on admission. It was further argued that the Single Judge fell into error in relying on the decision of the Supreme Court in S.R. Batra &Anr v. Smt. Taruna Batra, (2007) 3 SCC169 and the ruling of this Court in Shumita Didl Sandhu v. Sanjay Singh Sandhu, 2007 (96) DRJ 697. It was contended that those decisions overlooked the crucial definition of "shared household and that the respondent, was an expression not limited to male relatives of the applicant, but also female relatives, by virtue of proviso to Section 2 (q) and Section 19 (1) (f). It was argued that in the present case the husband had not been served and had not entered appearance; there were matrimonial disputes between him and the first defendant, i.e. the appellant. Counsel urged that the plaintiff and the second defendant colluded; the son disappeared. At the same time, the plaintiff Mdisownedu him after the matrimonial disputes started, and proceeded to file the suit. Counsel emphasized that it was precisely to overcome these strategies and devices that "shared household" was defined widely, and the wife, under the 2005 Act, was given the right to reside in such premises, by virtue of Section 17. It was also pointed out that by virtue of Section 26, the provisions of the 2005 Act could be invoked before any court in any stage of the proceeding. It was argued that the appellant is in a pitiable plight, because she has to maintain two school going children, who have been left untended and uncared by her husband and the orders of maintenance granted in her favour by the concerned magistrate have not been implemented. It was also pointed out that the wife has initiated criminal proceedings alleging that the husband had committed offences punishable under Sections 406 and 498-A of the Indian Penal Code (IPC).

7. Counsel for the plaintiff justified the impugned order. He argued that the appellant had made an unambiguous admission entitling the plaintiff to a decree under Order 12 Rule 6. Counsel submitted that the decisions in Shumita Didi Sandhu and S.R. Batra were conclusive as to the limits of the right to residence of the wife in a shared household. Here, the suit premises belonged to the plaintiff and the appellant could not claim the right to reside in it, since her husband had no right - ownership or otherwise in respect of those premises.

8. The first question which this court has to consider is whether there were admissions in the pleadings of the type to enable the court to draw a decree for possession on admission. The suit records were called for and have been gone into by this Court. In the written statement, the appellant had claimed that the suit was not maintainable because the suit premises were her matrimonial home where she was entitled to reside. At more than one place, (especially in reply to the plea that the plaintiff is "absolute owner'' of the property), the appellant unequivocally denied the plaintiff's title and stated that she was put to strict proof of the claim of sole ownership. In respect of the allegation that the ownership was on account of testamentary devolution by virtue of late Tek Chand's registered Will, the appellant denied them, stating that such was not the case Mas per her knowledge". Since she had no knowledge and the plaintiff was put to strict proof, the appellant went on to state that this could be done by obtaining probate - a course which had not as yet been resorted to. The gist of these averments, therefore, was that the appellant denied the plaintiff's title. She did not admit the Will, and the clear admission that the written statement contained was as to the relationship of the parties.

9. The question here is whether the pleadings taken as a whole point to an unambiguous and clear admission contemplated by law. The standard spelt out in Uttam Singh Duggal & Co. v. United Bank of India & Ors 2000 (7) SCC 120 and Jeevan Diesel & Electricals Limited v. Jasbir Singh Chadha & Another, C2010l 6 SCC 601 that the Courts have to adopt, while considering pleadings and considering if a decree on admission is to be drawn, is whether there is a "clear and unequivocal admission of the case" (of the plaintiff, by the party defending the application). It is also not in dispute that there is no golden rule about what constitute as Mclear and unequivocal admission". The Court has to proceed on a case fact dependent approach having due regard to the overall effect of the pleadings and documents. This is clear from the decision in Gilbert v. Smith, 1875-76 (2) Ch 686, which was relied upon by the Supreme Court in Jeevan Diesel (supra). The question was amplified in Western Coalfields Ltd. v. M/s Swati lndustires, AIR 2003 Born 369. In Jeevan Diesel (supra), it was held that:

   "whether or not there is a clear, unambiguous admission by one party of the case of the other party is essentially a question of fact and the decision on this question depends on the facts of the case. This question, namely whether there is a clear admission or not cannot be decided on the basis of a judicial precedent."

10. Courts cannot therefore base their decision to decree (or not to grant a decree) in a suit in terms of Order XII Rule 6 CPC only on the basis of a particular pleading or admission. Rather, the overall effect of the pleadings and documents of the concerned parties are to be weighed. The Court has to be mindful that what seems plainly an admission could well be explained by the litigant making it, during the course of the trial. Moreover, the controlling expression under Order 12 Rule 6 is that Court "may" grant a decree on admissions. It is important to analyze this aspect because

admissions either in the pleadings or in a document or in the course of a statement cannot be viewed in isolation.

11. In this case, the appellant's consistent stand in the written statement as well as in the reply to the application under Order 12 Rule 6 CPC was of denial of the plaintiff's claim of absolute ownership. This denial was unequivocal. The appellant also claimed that the plaintiff and her husband had colluded and the suit was a step to achieve the object of that collusion. She relies on the copies of the complaint, criminal proceedings and the orders made towards her maintenance, in support of those submissions. That she added that the plaintiff ought to obtain probate, is a matter of detail, in the written statement, which - with respect to the learned Single judge - was plucked out from the pleadings. Whether a will is probated or not, it requires to be proved, once the ownership of the property is disputed and the claim to such title is solely based on a will. This aspect gains importance because in the event of a trial it would have been necessary for the plaintiff to prove due execution of the will, in tune with provisions of the Indian Succession Act and the Evidence Act. That part of the written statement and reply to the plaintiff's application dealing with the plaintiff's obligation to obtain probate, should not, in our view with respect to the impugned judgment, have been the exclusive basis for holding that the plaintiff was entitled to a decree on admissions. The impugned judgment in effect assumes plaintiff's title to the suit premises on the basis of due execution of the Will, which was not proved. This court, therefore, is of opinion that the appellant's pleadings cannot be considered as unequivocal or unqualified, and admissions, necessitating a decree on admissions.

12. The next question is whether the learned single judge was right in holding that the provisions of the 2005 Act did not aid the appellant and that she could not claim the suit premises to be "shared household".

13. The question has to be examined in view of provisions of the 2005 Act. Section 2(a) of the Act states:

    "2(a) "aggrieved person" means 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;"

    Section 2(f) states that:

    "2(f) " 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 family;"

    Section 2(s) defines shared household as follows:

    "2(s) " shared household" means 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"

Section 2 (q) defines who is a respondent: "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 any relief under this Act"

Section 3(a) states that an act will constitute domestic violence in case it

"harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse;" or (emphasis supplied)

The expression "economic abuse" has been defined to include:

"(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance."

An aggrieved person under the Act can approach the Magistrate under Section 12 for the relief mentioned in Section 12(2). Under Section 20(1)(d) the Magistrate can grant maintenance while disposing of the application under Section 12(1). Section 26(1) provides that the relief mentioned in Section 20 may also be sought in any legal proceeding, before a civil court, family court or a criminal court.

14. There are some decisions which have preferred the view that since the ruling in S.R. Batra held that when the premises are not owned by the husband, the applicant/wife cannot claim it to be a shared household (for example, Neetu Mittal v. Kanta Mittal, (2008) DLT 691, which held that self-acquired property of the husband's parents are not shared household).

15. These decisions, with respect, proceeded on an erroneous understanding of the statute. For this, it would be useful to recollect the decision in Eveneet Singh v. Prashant Chaudhari, 177(2011) DLT 124 where it was held that:

"11. The key to an understanding of the rights flowing from the Domestic Violence Act, are concepts such as "domestic relationship'- which inter alia, is Ra 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..."; who is a " Respondent''- a term not confined only to males who had lived with the aggrieved person, i.e. the complainant female, but also by virtue of proviso to Section 2(q) to Ra relative of the husband..." (in the case where the domestic relationship is or was a marriage). This aspect has been noticed, and clarified in several rulings by various High Courts (Ref Afzalunnisa Begum v. The State of A.P., 2009 Cri. L.J. 4191; Archana Hemant Naik v. Urmilaben Naik, 2010 Cri.L.J. 751 and Varsha Kapoor v. Union of India, WP (Crl.) No. 638 of 2010, Decided on: 03.06.2010, by a Division Bench of this High Court). It has been held that when a law uses the same word in different parts of the same statute, there is a presumption that that it is used in the same sense throughout (Suresh Chand v. Gulam Chisti, : (1990) 1 SCC 593), unless the context indicates otherwise (Bhogilal Chunnilal Pandya v. State of Bombay, 1959 Supp (1) SCC 593). Now, the relevant part of Section 19 reads as follows:

"19. Residence orders.-(1) While disposing of an application under Sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken

place, pass a residence order - (a) restraining the Respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the Respondent has a legal or equitable interest in the shared household...." (Emphasis supplied)

The broad and expansive nature of the Court's power to make a residence order is also underlined by the amplitude of the definition of "shared householdR, which is ''where the person aggrieved lives or at any stage has lived-

(i) in a domestic relationship

(ii) either singly or along with the Respondent and includes such a household

 (a) whether owned or tenanted either jointly by the aggrieved person and the Respondent, or

 (b) owned or tenanted by either of them

(iii) 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

(iv) 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.

It is thus apparent that Parliamentary intention was to secure the rights of aggrieved persons in the shared household, which could be tenanted by the Respondent (including relative of the husband) or in respect of which the Respondent had jointly or singly any right, title, interest, or "equity". For instance, a widow living with a mother-in-law, in premises owned by the latter, falls within a "domestic relationship"; even if the mother-in-law does not have any right, title or interest, but is a tenant, or entitled to "equity'' in those premises, the same would be a "shared household". In such circumstances, the widowed daughter-in-law, can well claim protection from dispossession, notwithstanding that her husband never had any ownership rights, in the premises, because she lived in it; if the mother-in-law, is a tenant, then, on the ground that she is tenant, or someone having equity. It may, however, be noticed here that Section 19, while referring to a " Respondent", lays down a limited exception under the proviso to 19(1)(b), exempting women from being directed to remove themselves from the shared household. However, no such exception has been carved out for the other reliefs under Section 19, especially in respect of protection orders. Clearly, if the legislature had wanted to create another exception in favor of women, it could have done so. The omission here, seems deliberate and in consonance with the rest of the scheme of the Act. Another instance of a domestic relationship may be an orphaned sister, or widowed mother, living in her brother's or son's house; it falls within the definition of domestic relationship, (which is one where the parties are related by consanguinity, or marriage) constitutes a shared household, as the brother is clearly a Respondent. In such a case too, if the widowed mother or sister is threatened with dispossession, they can secure reliefs under the Act, notwithstanding exclusive ownership of the property, by the son or brother. Thus, excluding the right of residence against properties where the husband has no right, share, interest or title, would severely curtail the extent of the

usefulness of the right to residence. This was noted by the Bombay High Court in Archana Heman!Naik (supra) in the following terms:

"If a wife or a woman to whom the proviso is applicable is compelled to seek residence order in respect of a shared household only as against the male relatives of her husband or male partner, as the case may be, the order under Section19 of the said Act will be completely ineffective in as much as the female relatives of the husband or the male partner occupying the shared household will continue to disturlb possession of such wife or such female of the shared household, or may continue to prevent entry of such aggrieved wife or female to the shared household." (Emphasis supplied)

12. The Domestic Violence Act is a secular legislation, akin to Section 125 of the Code of Criminal Procedure, 1973. It was enacted "to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family". The introduction of the remedy of right to residence is a revolutionary and path breaking step, taken to further the objects of the Act, and any attempt at restricting the scope of the remedy would reduce the effectiveness of the Act itself. Therefore, it would be contrary to the scheme and the objects of the Act to restrict its application to only such cases where the husband owns some property or has a share in it, as the mother-in-law can also be a Respondent in the proceedings under the Domestic Violence Act and remedies available under the same Act would necessarily need to be enforced against her.

13. Again, to confine the reference to "joint" family property by bringing in the concept of a HUF would be to restrict the application of the provision, to a point which is contrary to Parliamentary intention that the law is a non-sectarian one. The "joint" status of a family here obviously is in a generic sense, and importing notions of HUF would unwittingly give greater benefits to one section of the community, which was never the intention of Parliament. In a generic sense, it refers to a group of people, related either by blood or marriage, residing in the same house and instances of that can be found in almost all parts of India. The general practice in India is that the son and his wife reside in the house of the (husband's) parents after marriage. Even though a legal obligation to maintain a child ceases as soon as he attains majority, the jural relationship between the parents and the child continues. The concept of a "joint family" in law is peculiar to Hindu law. No concept of a "joint family' similar to that of an HUF can be found in Muslim Law, Christian Law or any other personal law.

14. The danger of accepting a restricted interpretation of joint family by equating it to a HUF would result in discrimination, because women living in a shared household belonging to HU Fs (and therefore Hindus) would have more security, by reason of their professing the Hindu faith than others who are not Hindus. Also, even among Hindus, women who are married into or live in HUFs, as compared with those living with husbands, whose parents own the property - on an application of Batra -would have the protection of the Act; the latter would not have any protection. It is precisely to avoid this anomaly that Parliament clarified that irrespective of title of the "Respondenf' to the "shared household", a protection order can be made under Section 19(1)(a).

15. The definition of "shared household" emphasizes the factum of a domestic relationship and no investigation into the ownership of the said household is necessary, as per the definition. Even if an inquiry is made into the aspect of ownership of the household, the definition casts a wide enough net. It is couched in inclusive terms and is not in

any way, exhaustive (S. Prabhakaran v. State of Kerala, 2009 (2) RCR 883. It states that "...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 (Emphasis supplied).

16. It would not be out of place to notice here that the use of the term "Respondent" is unqualified in the definition nor is there any qualification to it under Sections 12, 17 or 19. Therefore, there is no reason to conclude that the definition does not extend to a house which is owned by a mother-in-law or any other female relative, since they are encompassed under the definition of "Respondent" under Section 2(q)." (emphasis supplied)

16. The above decision of a single judge was approved by the Division Bench in Eveneet Singh v. Prashant Chaudhari (DB, FAO (OS) 71-72/2011, decided on 08.11.2011)

"12. Thus, at best it can be urged that while deciding an issue pertaining to a wife's claim for residence in the shared household the discussion must start with a presumption in favour of the wife that law leans in her favour to continue to reside in the shared household and only upon adequate circumstances being manifestly and objectively disclosed by the opposite party, could an order contemplated by clause (f) of sub-section 1 of Section 10 of the Act be passed.

13. In the instant case the circumstance to take recourse to clause (f) of sub-section 1 of Section 19 of the Act would be the extreme ill health of the mother-in-law of the appellant; medical documents pertaining to whom would show that she suffers from 'tachycardia' with heart muscles functioning at about 20%. The constant strife with the newly married daughter in-law in her house would certainly have an adverse effect on the mother-in-law. Besides, the husband of the appellant is currently in Hyderabad and not at Delhi.

14. It is apparent that clause (f) of sub-section 1 of Section 19 of the Act is intended to strike a balance between the rights of a daughter-in-law and her in-laws, if a claim to a shared residence by the daughter-in-law pertains to a building in which the matrimonial home was set up belongs to her mother-in-law or father-in-law."

17. In an earlier decision, Varsha Kapoor v. UOI & Ors. 2010 VI AD (Delhi) 472 another Division Bench interpreted Section 2(q) of the Act also concluded that "respondent" can include female relatives of the husband. The Division Bench held as under:

"15. Having regard to the purpose which the DV Act seeks to achieve and when we read Section 2(q) along with other prov1s1ons, out task is quite simple, which may in first blush appear to be somewhat tricky. We are of the considered view that the manner in which definition of "respondent" is given under Section 2(q) of DV Act, it has to be segregated into two independent and mutually exclusive parts, not treating proviso as adjunct to the main provision. These two parts are:

a) Main enacting part which deals with those aggrieved persons, who are "in a domestic relationship". Thus, in those cases where aggrieved person is in a domestic relationship with other person against whom she has sought any relief under the DV Act, in that case, such person as Respondent has to be an adult male

person. Given that aggrieved person has to be a female, such aggrieved person in a domestic relationship can be a mother, a sister, a daughter, sister-in-law, etc.

b) Proviso, on the other hand, deals with limited and specific class of aggrieved person, viz. a wife or a female living in relationship in the nature of marriage. First time by this legislation, the legislator has accepted live in relationship by giving those female who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage, also akin to wife, though not equivalent to wife. This proviso, therefore, caters for wife or a female in a live in relationship. In their case, the definition of "respondent" is widened by not limiting it to "adult male person" only, but also including "a relative of husband or the male partner'', as the case may be.

What follows is that on the one hand, aggrieved persons other than wife or a female living in a relationship in the nature of marriage, viz., sister, mother, daughter or sister-in-law as aggrieved person can file application against adult male person only. But on the other hand, wife or female living in a relationship in the nature of marriage is given right to file complaint not only against husband or male partner, but also against his relatives.

16. Having dissected definition into two parts, the rationale for including a female/woman under the expression "relative of the husband or male partner" is not difficult to fathom. It is common knowledge that in case a wife is harassed by husband, other family members may also join husband in treating the wife cruelty and such family members would invariably include female relatives as well. If restricted interpretation is given, as contended by the Petitioner, the very purpose for which this Act is enacted would be defeated. It would be very easy for the husband or other male members to frustrate the remedy by ensuring that the violence on the wife is perpetrated by female members. Even when Protection Order under Section 18 or Residence Order under Section 19 is passed, the same can easily be defeated by violating the said orders at the hands of the female relatives of the husband.

19. It is also well-recognized principle of law that while interpreting a provision in statute, it is the duty of the Court to give effect to all provisions. When aforesaid provisions are read conjointly keeping the scheme of the DV Act, it becomes abundantly clear that the legislator intended female relatives also to be Respondents in the proceedings initiated by wife or female living in relationship in the nature of marriage, the same can easily be defeated by violating the said orders at the hands of the female relatives of the husband.

19. It is also well-recognized principle of law that while interpreting a provision in statute, it is the duty of the Court to give effect to all provisions. When aforesaid provisions are read conjointly keeping the scheme of the DV Act, it becomes abundantly clear that the legislator intended female relatives also to be Respondents in the proceedings initiated by wife or female living in relationship in the nature of marriage."

18. This interpretation has been approved in Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade, [2011] 2 SCR 261 by the Supreme Court. The learned Single Judge of the High Court had, in that case, disposed off the writ petition with a direction to the Appellant to vacate her matrimonial house, which was in the name of the second Respondent and also directed the Trial Court to expedite the hearing of the wife's

miscellaneous criminal application within six months. A further direction was given confirming the order relating to deletion of the names of the 'other members' from the complaint filed by the Appellant. The judgment of the High Court was challenged before the Supreme Court. Allowing the appeal, the Supreme Court held:

"13. It is true that the expression "female" has not been used in the proviso to Section 2 (q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only.

14. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.

15. In our view, both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression "respondent" in the main body of Section 2(q) of the aforesaid Act."

19. The ruling in Shumita Didi Sandhu, in this Court's opinion, with due respect, did not analyze the entirety of the definition of "shared household". Nor did it link the concept and the right to residence granted by the 2005 Act with the definition of Mrespondenf' which includes female relatives of the husband, and not just the male relatives. That decision was rendered much before the ruling in Varsha Kapoor, and the Supreme Court decision in Sandhya Manoj Wankhede. Its absence of any discussion on the rights of women as against female relatives of the husband regardless of whether the respondent had any right, or interest in the property, in this Court's opinion, results in limiting it to deciding the facts of that case. It would be also necessary to notice a decision of the Supreme Court in Vimalben Ajitbhai Patel v. Vatslabeen Ashokbhai Patel and Ors., 2008C4lSCC 649. There, the wife was beneficiary of a maintenance order, which was sought to be enforced through execution, against her mother in law's property. The wife claimed that since it was a shared household, the property could be attached. Repelling the argument, the Supreme Court held that the obligation to provide maintenance was of the husband and any order in that regard could be enforced against him, by attachment of his personal assets or properties. It was in this context that the Court held that a shared household belonging to the mother in law could not be subject matter of attachment. The context of that decision was different as the Supreme Court, in this Court's opinion, did not decide that despite the definition of "shared household.enabling a wife the right of residence in premises not owned by the husband, she could not claim to live there. Rather, in proceedings for maintenance, the claim may not lie against the mother-in-law's property- a domain that the present case does not touch upon.

20. Crucially, Parliament's intention by the 2005 Act was to secure the rights of aggrieved persons in the shared household, which could be tenanted by the Respondent (including relative of the husband) or in respect of which the Respondent had jointly or singly any right, title, interest, or "equity". For instance, a widow (or as in this case, a daughter in law, estranged from her husband) living with a mother-in-law, in premises owned by the latter, falls within a "domestic relationship•. The obligation

not to disturb the right to residence in the shared household would continue even if the mother-in-law does not have any right, title or interest, but is a tenant, or entitled to "equity" (such as an equitable right to possession) in those premises. This is because the premises would be a Mshared household•. The daughter-in-law, in these circumstances is entitled to protection from dispossession, though her husband never had any ownership rights in the premises. The right is not dependent on title, but the mere factum of residence. Thus, even if the mother-in-law is a tenant, then, on that ground, or someone having equity, she can be injuncted from dispossessing the daughter in law. In case the mother in law is the owner, the obligation to allow the daughter in law to live in the shared household, as long as the matrimonial relationship between her and the husband subsists, continues. The only exception is the proviso to 19(1)(b), which exempts women from being directed to remove themselves from the shared household. No such exception has been carved out for the other reliefs under Section 19, especially in respect of protection orders. Had the Parliament intended to create another exception in favor of women, it would have done so. This omission was deliberate and in consonance with the rest of the scheme of the Act. There can be other cases of domestic relationships such as an orphaned sister, or widowed mother, living in her brother's or son's house. Both are covered by the definition of domestic relationship, as the brother is clearly a Respondent. In such a case too, if the widowed mother or sister is threatened with dispossession, they can secure reliefs under the Act, notwithstanding exclusive ownership of the property by the son or brother. Thus, excluding the right of residence against properties where the husband has no right, share, interest or title, would severely curtail the extent of the usefulness of the right to residence.

21. The other aspect, which this Court wishes to highlight, is that the 2005 Act applies to all communities, and was enacted "to provide more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family''. The right to residence and creation of mechanism to enforce is a ground breaking measure, which Courts should be alive to. Restricting the scope of the remedies, including in respect of the right to reside in shared household, would undermine the purpose of this enactment. It is, therefore, contrary to the scheme and the objects of the Act, as also the unambiguous text of Section 2(s), to restrict the application of the 2005 Act to only such cases where the husband alone owns some property or has a share in it. Crucially, the mother-in-law (or a father-in-law, or for that matter, "a relative of the husband") can also be a Respondent in the proceedings under the 2005 Act and remedies available under the same Act would necessarily need to be enforced against them.

22. Likewise, the interpretation preferred by some learned single judges that where the husband has some rights (as a member of the HUF, i.e. the Hindu Undivided Family) and if those premises were the shared household, the wife can enforce her right to residence, also constitutes an internally incoherent and restrictive interpretation of the Act. As explained in Evneet Singh, such a construction is contrary to Parliamentary intention that the law is a non sectarian one. Indeed, the "joint" status of a family referred to under Section 2 (s) is in a generic sense. To equate it with a HUF would result in unintended benefits to one set of respondents, who are Hindus. Speaking generically, "joint family'' refers to a group of people, related either by blood or marriage, residing in the same house. Instances of that can be found in almost all parts of India. The general practice in India is that the son and his wife reside in

the house of the (husband’s) parents after marriage, though the legal obligation to maintain a child ceases as soon as she or he attains majority, the jural relationship between the parents and the child continues. The concept of a “joint family” in law is peculiar to Hindu law. No concept of a “joint family” similar to that of an HUF can be found in Muslim law, Christian law or any other personal law. Therefore, a restrictive interpretation of “joint family” by equating it to a HUF would result in implicit discrimination, because women living in a shared household belonging to an HUF (and therefore, Hindus) would have more security, by reason of their professing the Hindu faith than others who are not Hindus. In fact, even among Hindus, women who are married into or live in HUFs, as compared with those living with husbands, whose parents own the property - on an application of Batra - would have the protection of the Act, while the latter would not. This inequity was addressed by the Parliament which stated in no uncertain terms that irrespective of title of the “Respondenf’ to the “shared household”, a protection order can be made under Section 19(1)(a).

23. The facts of this case contain the classic elements of a husband seeking to evade his responsibilities upon marital discord breaking out. He allegedly disappeared and was “disowned” by his mother. The appellant’s mother-in law then instituted the suit, to dispossess the daughter in law and her grand-children, claiming that she no longer has any relationship with her son or her daughter in law. She based her claim to ownership of the suit property on a will. The daughter in law has not admitted the will. Nor has it been proved in probate proceedings. Often, sons move out, or transfer properties or ownership rights, or shares in immovable properties, at the hint of trouble or discord with their wives, in favour of their relatives. Likewise, the parents of the husband often in such cases “disown” them after the son moves out from the common or “jointpremises owned by either or both his parents, when there is outbreak of marital discord. Courts have to be cautious in their approach, while entertaining and short circuiting suits for possession, which are in effect directed against the plaintiffs’ daughter-in law, or else the right of residence in shared households would be a mere chimera, a teasing illusion which the law grandly promises, but is seldom, if ever, able to enforce. In fact, the strategy of “disowning” sons, through public notices or advertisement, is not to be taken lightly. For example, even if a son is disowned by either parent, the death of that parent would, if intestate, still lead to devolution of property upon that son. Indeed, a mere proclamation does not have a dispositive legal effect, breaking all legally relevant familial ties. Thus, absent a deed of relinquishment or other formal deed of partition of the family or separation between the members, the Court must be cautious in denying statutory rights to wives, as against members of the husband’s family, on the basis of such tentative facts. To the contrary, if the Court is to place reliance on such acts, benefits enacted by the 2005 Act in favour of the wife would be bypassed on account of alleged, and possibly fleeting discords between the husband and his family. Indeed, such an approach is neither legally tenable, nor viable given the scheme of the Act.

24. In view of the above discussion, the impugned judgment and decree of the learned single judge is hereby set aside; parties are directed to present themselves before the concerned single judge as per roster allocation, on 6th February, 2014 for directions toward further proceedings in the suit. The appeal is allowed, under the above circumstances, without any order as to costs.

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DOMESTIC VIOLENCE ACT : S.12, S.17, S.19, S.2(a), S.31IINDIAN PENAL CODE: S.2(f), S. 2(s),S.441,S.442, S.448,S.498(a) [2012] 0 Supreme(Del) 34868

High Court of Delhi

SURESH KAIT, J.

Kavita Dass
Versus
NCT Of Delhi &Another

Cri.M.C. Nos.4282 & 4283 OF 2011 & Crl. M.A. No. 19670 & 19672 OF 2011 (stay)
Decided On: 17-04-2012

Cases Referrred:

"S R Batra and Anr. Vs. Smt. Taruna Batra Vimlaben Ajitbhai Patel Vs. Vatslaben Ashokbhai Patel reported in (2008) 4 SCC 649

Smt. Kanwal Sood Vs. Nawal Kishore and Anr. (1983) 3 SCC 25

Judgment:

SURESH KAIT, J:

1. Vide this common judgment, I shall dispose of both the above mentioned petitions.

2. The petitioner has sought to quash FIR No.157 dated 07.12.2011 registered under Section 448 Indian Penal Code, 1860 at PS. Defence Colony, New Delhi against petitioner/wife and to set aside order dated 28.11.2011 passed by learned Additional Sessions Judge, Saket District Courts, New Delhi in Appeal CA No.35/11 in case titled Kavita Dass Vs Ranjit Dass?.

3. Brief facts of the case are that the petitioner got married to respondent No.2 on 26.12.1975 at Delhi. After marriage, the petitioner and respondent No.2 lived together in abroad (Sri Lanka and Australia) as husband and wife for 12 long years. Two sons were born out of the said wedlock in 1978 and 1981 respectively. The elder son Rajad Das is married and settled in London while the younger son has been living in Delhi.

4. In 1992, the respondent No.2 acquired a license to start his own company in the name & style of ,Forex Company?. Accordingly, the couple came back to India and started living in a rented accommodation bearing address C-293, Defence Colony, New Delhi. During their stay in India, the respondent No.2 came in contact with another woman, a spinster and fell in love with her. This was a flash point in the relationship. All efforts were made by the petitioner to convince the respondent No.2 to give up the illicit liaison with another woman, however, failed.

5. The situation further became worst. The respondent No.2 as a part of a well planned act, sometime in July, 2009 left the premises C-293, Defence Colony, New Delhi and abandoned the petitioner/wife. Thereafter, respondent No.2 in connivance with the then landlord, got an eviction order in a suit filed against himself as well as the petitioner/wife. The aforesaid suit for eviction was decided ex parte in favour of the then landlord, accordingly, petitioner was forced to leave the shared household, i.e. C-293, Defence Colony, New Delhi on 25.08.2010.

6. After the eviction, the petitioner was literally came on road and was forced to take shelter at her brother-in-law?s house at C-52, Defence Colony, New Delhi. Petitioner

stayed there from 25.08.2011 till 16.04.2011. Around July, 2009, the respondent No.2 after abandoning the petitioner filed a divorce petition bearing No.1079/2009 against her which is pending before Ld. Additional District Judge, Sake!District Courts, New Delhi.

7. In addition to the divorce petition, the respondent No. 2, around September, 2009 coerced and virtually cajoled the petitioner to sign an out of court memorandum of understanding (MOU) by absolutely fraudulent means of representation, wherein, the respondent No. 2 had stated that he would pay the permanent alimony of Rs.451acs to the petitioner against a divorce by mutual consent.

8. Accordingly, on the basis of the aforesaid MOU, the respondent No. 2 filed a petition for divorce and dissolution of marriage on the basis of mutual consent, however, till date not even the first motion has taken place as the petitioner realized that her signatures on the MOU were obtained by fraudulent representations. As such she did not act upon the said MOU being well within her rights to do so.

9. The petitioner was compelled and constrained to approach trial court with complaint filed under section 12 of the Domestic Violence Act, seeking interim measures and interim relief in accordance with provisions of the said Act and in the facts and circumstances of the case, the trial court vide interim order dated 10.09.2010 directed the respondent No. 2 to pay an amount of Rs.10,000/-to the petitioner as an interim maintenance, as well as monthly rent of Rs.25,000/-from the date of petitioner?s eviction from the then shared household.

10. Subsequently, the petitioner in the month of April, 2011 came to know that the respondent No. 2 had taken another premises bearing address D-12, Defence Colony, New Delhi on rent. Accordingly, on 17.04.2011, she entered in to her new matrimonial home D-12, Defence Colony, New Delhi with the help of Protection Officer Ms.Preeti Saxena, who handed over to her the keys of the front door, bedroom door and balcony door from the respondent. Since then, the petitioner has been residing with respondent No.2 at the aforesaid rented shared accommodation.

11. Thereafter, the petitioner on 18.04.2011, moved an application in the court of Ld. MM, Ms. Pooja Talwar, Sake! District court seeking protection against her removal from the aforesaid shared household i.e D-12 Defence Colony, New Delhi. An interim order dated 19.04.2011 u/s 17 and 19 of the D.V. Act was passed by the above named Ld. Magistrate, whereby the petitioner was granted right to live with the respondent No.2 in above mentioned shared household. However, subsequently, Ld. MM vide order dated 28.04.2011 vacated the earlier order dated 19.04.2011.

12. In the order dated 28.04.2011, Ld. MM observed that the present premises was not a shared household. The petitioner while signing the MOU was fully aware that she had to vacate the said premises, therefore, there was no reason for the petitioner to enter the house of respondent No.2 forcefully, accordingly, the Ld. MM directed that the petitioner may be removed from the premises by taking due recourse of law.

13. Mr. Vikas Pahwa, Ld. Senior Advocate appearing on behalf of the petitioner submitted that the petitioner was forced to give an out of court undertaking on 05.06.2011 stating that she will vacate the premises as directed by the Ld. Trial court. Subsequently, the petitioner, against order dated 28.04.2011, filed an Appeal under Section 29 of the Protection of Women from Domestic Violence Act, 2005 before Ld. Sessions Court, Saket District Court, New Delhi. Smt.Raj Rani Mitra, Ld.

ASJ, Saket Courts, New Delhi, granted an ex-parte stay on order of Ld. MM dated 28.04.2011, which was subsequently vacated vide order dated 09.06.2011 passed by the Ld. Additional Sessions Judge on an application of respondent No. 2, and the matter was transferred to Sh. A.K. Garg, Ld. ADJ, Saket District Courts, New Delhi, which court was in seize of a connected appeal in the same matter.

14. Sh. A.K. Garg, Ld. ASJ, Saket Courts heard the arguments in Appeal No.35/11 and reserved for order on 12.10.2011. Thereafter, Ld. ASJ adjourned the pronouncement on 13 occasions before finally dismissing the appeal and upheld the Ld. MM?s order dated 28.04.2011, whereby, the petitioner was directed to be removed from Respondent No. 2/husband?s rented premises on the ground that the said premises was not a shared household and the petitioner had no right to enter the said premises forcefully.

15. Ld. counsel for the petitioner further submitted that FIR No.157 dated 07.12.2011 registered at P.S. Defence colony, is legally and factually unsustainable in law. Ld. ASJ has committed a serious error in ignoring the fact that the house in question was a matrimonial home and shared household. Moreover, no evidentiary value can be given to out of court settlement deed entered into between the parties, which MOU was signed by the petitioner under duress.

16. Further submitted that no divorce has taken place between the parties, therefore, the petitioner has legal right to stay with her husband, it being her matrimonial home.

17. Further Ld. Counsel for the petitioner refers to a judgment passed by Hon?ble Supreme Court in a case titled as "S R Batra and Anr. Vs. Smt.Taruna Batra" reported in (2007) 3 sec 169. wherein, it was held as under:-

"....a ushared 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...?

".....the definition of ushared household?in Section 2(s) of the Act is not very happily worded, and appears to be the result of clumsy drafting, but we have to give it an interpretation which is sensible and which does not lead to chaos in society•.

18. Further refers to a case decided by Hon?ble Supreme Court in Vimlaben Ajitbhai Patel Vs. Vatslaben Ashokbhai Patel reported in (2008) 4 sec 649 I wherein, it was observed as under:-

"....The Domestic Violence Act provides for a higher right in favour of a wife. She not only acquires a right to be maintained but also thereunder acquires a right of residence. The right of residence is a higher right. The said right as per the legislation extends to joint properties in which the husband has a share..."

19. On perusal of the impugned order, ld. Judge was of the view that in no circumstances, D-12, Defence Colony can be said to be shared household. In addition to that since both the parties never resided together in the said house, therefore, that house cannot be termed as shared household as per provision of Section 2(f), 2(s) r.w.S. 17 of PWDV Act. When the order was being dictated, counsel for the appellant had appeared and stated that though the MOU was executed between the parties but the complainant did not wish to abide by the same for the reasons known to the appellant. It was mentioned in the order dated 18.04.2011, that the respondent was fully aware that she had to vacate the earlier premises, therefore, there was no

reason for her to enter the house of the respondent forcefully, since the said house cannot be said to a "shared household?, therefore, she may be removed from the premises by taking recourse to due process of law.

20. It was further observed in the order passed by Ld. Additional Sessions Judge, Sake! courts, New Delhi, while deciding the appeals of the appellant that the appellant?s main grievance is that the order has been passed for registration of the FIR u/s 31 of the Act which the magistrate is not empowered under the Act because the word .respondent?is specifically defined in the Act. Under the Act respondent means an adult male person and it is very clear that the respondent would be a person from the family of the husband only in the case the applicant is a wife.

21. Protection order was obtained uls 18. It is true that D.V. Act has been enacted to provide for more effective protection of the right of women guaranteed under the constitution who are victim of the violence of any kind. Section 2(a) of the Act defines the aggrieved person. Aggrieved person means any women who is or has been in a domestic relationship with the respondent and who alleges to have been subjected to any act of violence by the respondent.

22. It was further observed by Ld. Additional Sessions Judge that the appellant had entered in the house of the respondent without having any right, therefore, in these circumstances, order passed by Ld. MM on 10.06.2011 is deemed to be an order passed u/s 448 Indian Penal Code, 1860 for the offence of house trespass. In view of that, both the appeals of the appellant was dismissed with direction to register an FIR u/S 448 Indian Penal Code, 1860 against the appellant.

23. Mr. K.K. Manan, learned counsel appearing on behalf of respondent No. 2 submits that respondent No. 2 and the petitioner entered in MOU and the respondent No.2/ husband agreed to pay a sum of Rs.45 lacs to the appellant with the condition that she agreed to grant divorce by mutual consent. However, she did not come forward for the same and the present house, which is on rent is not shared household. She had neither complied with the conditions of MOU nor had she complied with order passed by learned trial court.

24. Further submitted that the impugned order does not suffer from any illegality and therefore, the instant petitions may be dismissed with exemplary costs.

25. Ld. Senior Counsel for petitioner on rebuttal submitted that the courts below have wrongly passed the orders by directing SHO concerned to lodge FIR under Section 448 Indian Penal Code, 1860.

26. Ld. Counsel further refers to Section 441 of Indian Penal Code, 1860 according to which the trespass should be with intention to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence.

27. The petitioner herein did not entered in anybody?s property, but it was the house of her husband and entered with the help of Protection Officer under the protection of Domestic Violence Act. Therefore, she rightly entered the house which is her matrimonial house.

28. Therefore, he submitted that the case against the petitioner cannot be lodged for the criminal trespass. In Section 442 of IPC, the definition of house trespass is given, which reads as under:-

'Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

29. In the instant case, the petitioner is legally wedded wife of respondent No. 2, there is no divorce taken place, she entered into the house of respondent No.2 with no intention of committing offence and the petitioner has not committed any offence. Therefore, both the court i.e. Trial and appellate court have gone wrong by directing her to vacate the house which was taken on rent by her husband/respondent No.2 and to lodge an FIR against her.

30. Presently, where a woman is subjected to cruelty by her husband or his relative, it is an offence committed under Section 498A of Indian Penal Code, 1860. The Civil Law does not further address this phenomenal in its entirety. Therefore, it is by virtue of Protection of women against Domestic Violence Act, which interalia seeks to provide as under:-

(s) " shared household" means 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;"

31. I have noted that in the judgment delivered by Hon?ble Supreme Court in the matter of Smt. Kanwal Sood Vs. Nawal Kishore and Anr. (1983) 3 SCC 25. referred to by learned counsel for the petitioner, it has been observed as under :-

"10 It may be pointed out that the appellant was allowed to occupy the premises in 1967 by Shri R.C. Sood. Under the terms of gift-deed Shri Sood was entitled to remain in occupation of the premises during his life time. He could as well grant, leave and licence top the appellant to occupy the premises along with him. Now the question arises about her status after the death of Shri R.C. Sood. At the most, it can be said that after the death of Shri Sood the leave and license granted by Shri Sood came to an end and if she stayed in the premises after the death of Shri Sood, her possession may be that of a trespasser but every trespass does not amount to criminal trespass within the meaning of section 141 of the Indian Penal Code. In order to satisfy the conditions of section 441 it must be established that the appellant entered in possession over the premises with intent to commit an offence. A bare persual of the complaint filed by Respondent No. I makes it abundantly clear that there is absolutely no allegation about the intention of the appellant to commit any offence or to intimidate, insult or annoy any person in possession, as will be evident from three material paragraphs which are quoted below:

32. That the late Shri R.C. Sood was occupying the said premises in accordance with clause No. I of a gift-deed executed by him in favour of Shri Anand Mayee Sangh and after his demise the said premises had to be delivered to Shri Anand Mayee Sangh.

3. That after the demise of Shri R.". Sood, the accused was repeatedly requested to voluntarily vacate and deliver the possession of the said premises to the Sangh

but the accused paid no heed and hence a notice dated 13.11.1973, copy of which enclosed, was sent to the accused as required by U.P. Amendment of Section 448 I.P.C. the said notice was served upon accused on 14.11.73 as per postal A.D. receipt attached herewith.

4. That the accused was required to quit and vacate the said premises by the 2oth day of November, 1973 but instead of vacating the premises the accused has been making unusual pretext and has thus committed an offence under section 448 I.P.C." 11 The appellant may be fondly thinking that she had a right to occupy the premises even after the death of Shri R. C. Sood. If a suit for eviction is filed in Civil Court she might be in a position to vindicate her right and justify her possession. This is essentially a civil matter which could be properly adjudicated upon by a competent Civil Court. To initiate criminal proceedings in the circumstances appears to be only an abuse of the process of the Court:

32. On perusal of aforesaid provisions and laws laid down by Hon?ble Supreme court, it includes any household owned or tenanted by either of the parties in respect of which either the aggrieved person/wife or the respondent or both jointly or singly have any right, therefore, the petitioner being legally wedded wife has a right to live with the husband, whether he lives in an ancestral house or own acquired house or rented house. Therefore, if the respondent does not allow the aggrieved person then by taking shelter of the court, the Magistrate may pass the order so that she may enter in the house or she would not be thrown out from the house of his husband without due process of law. Certainly, not otherwise, as directed by the Ld. MM and upheld by the appellate court.

33. In my opinion, the court cannot ask the aggrieved person to vacate the house, even though, may be on rent. However, she cannot be directed to vacate the same without due process of law. The second direction of the court to register a case against the aggrieved person on not vacating the house of her husband is not only bad in law but is also against the mandate of the Act. The issue on shared household has already been decided by the Apex Court in case of S.R. Batra (supra).

34. The impugned orders passed by the two courts below i.e the court of Ld. MM and court of Ld. Additional Sessions Judge have defeated the very purpose of Act, and therefore, the instant petitions are allowed and the impugned order mentioned above are set aside.

35. Accordingly, the FIR No.157 dated 07.12.2011 registered under Section 448 Indian Penal Code, 1860 at PS. Defence Colony, New Delhi against petitioner/wife is quashed along with all the emanating proceedings there from.

36. Both the petitions are allowed and disposed of on above terms.

37. The applications for stay in both the petitions are disposed of being infructous.

38. No order as to costs.

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CRIMINAL PROCEDURE CODE : 5.4821 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT:5.12,5.18, 5.19,5.20,5.20(2), 5.21,5.22,5.26, 5.29 [2012] 0 Supreme(Del) 35431

High Court of Delhi

M.L. MEHTA Sunil Madan
Versus
Mrs. Rachna Madan & Another

CRL. M.C. 3071 OF 2008
Decided on: 02-06-2012

Judgment:-

M.L. MEHTA, J.

1. This petition under Section 482 CrPC is filed seeking quashing of the criminal complaint No. 262211 filed against the petitioner by his wife and daughter (respondents No. 1 & 2 herein) under Section 12 of Protection of Women From Domestic Violence Act, 2005 (for short the 'Act').
2. At the outset, it may be noted that in the aforesaid complaint of the respondents, no order other than that of maintenance @ Rs. 30,000/- per month was passed by the Metropolitan Magistrate and even none of the parties have challenged the said order of maintenance. Thus, there is no order which is sought to be impugned in the present petition. Under the Act and particularly Chapter IV thereto, the Magistrate has been empowered to hear and dispose of the applications for various reliefs. This is the Magistrate alone having jurisdiction, who has been empowered to pass the order of protection as also of residence including interim etc. under the Act. Then, the provisions also envisage ensuring the compliance of those orders by the Magistrate and even proceeding for punishment in breach of orders. Further, under Section 29 of the Act, an appeal has been provided to the court of Sessions from the orders of the Magistrate. This being the scheme of the Act and the primary duty and power being with the Magistrate and there being no order which is sought to be impugned, the complaint being at the nascent stage, I was outrightly of the view not to entertain this petition and remand back the matter to the concerned Magistrate. However, since after filing of the present petition under Section 482 CrPC, some proceedings have taken place before this court and the parties have also been heard, I am of the view that to some extent, the controversy can be addressed here leaving the rest to be done by the Magistrate.
3. The couple was married on 27.2.1990. A daughter (respondent No.2) was born on 4.4.1991.The aforementioned complaint was filed by the respondents in the court of M.M. on 8.10.2007. In the said complaint, the main allegations levelled by the wife (respondent No.1) against the petitioner were that he is an alcoholic and drug abuser, which he has not been able to give up despite repeated promises and some treatments. She alleged that after drinking, the petitioner would go violent and break expensive household things. She has mentioned about few specific instances of the petitioner having behaved in this manner and breaking certain household articles. She alleged that even the petitioner would pick up quarrels and beat her after getting drunk. She has also mentioned few instances of having been beaten by the petitioner. She averred that she had been tolerating this at the cost of her social deprivation and

embarrassment and also suffering due to his addiction as also his behaviour, but it has become difficult to stay with him as he often becomes aggressive and could harm anyone. She stated that now, she is unable to bear anymore at the hands of the petitioner and intends to live a peaceful life even if it requires living separately. She has specifically stated that now, it is not possible for her to live together. She alleged that having seen him throughout, she has bona fide apprehension that the petitioner may throw her and her daughter out of the matrimonial house where she has been living for about nine years. She alleged the petitioner to be owning various movable and immovable properties in his name, the details of which are stated in Paras 25 and 26 of the complaint. She further stated that she being the Director of the petitioner's company, was getting Rs. 22,000/- per month and was also being provided Rs. 98,000/- (approximately) per month as towards the household expenses. She sought restraint order against the petitioner from selling, alienating or creating third party interest in those properties. She has also sought the relief that the petitioner be restrained from taking possession of the car from her, which was in the name of the company.

4. The petitioner in reply to the complaint before Magistrate not only denied all the allegations levelled against him, but levelled various counter allegations against his wife. He also, with equal force levelled allegations of his wife not at all being caring, picking up fights, using abusive language, not doing any household activities and even causing physical violence and being highly materialistic. This being the state of affairs, both levelling allegations of domestic violence against each other, it was not at all possible to determine in the present proceedings, all these allegations, all and counter allegations, all being triable issues. However, this being the admitted factual situation that both of them cannot live together any longer, some solution was required to be found out for resolving the controversies.

5. The wife had claimed the following reliefs in the complaint against the petitioner:

   (i) restraint order against the petitioner from selling, alienating or creating any third party interest in the assets mentioned in the complaint;

   (ii) restraint order against the petitioner from taking forcible possession of the Car DL-3CY-9031 from her;

   (iii) restraint order against the petitioner from dispossessing her from the premises where she has been living over the last nine years; and

   (iv) protection order for their safety and security from the petitioner.

6. In the aforesaid complaint, an interim order of maintenance dated 3.11.2007 was passed by the M.M., directing the petitioner to pay Rs. 33,000/- per month to the respondents, which the petitioner undisputedly has been paying to his wife.

7. The present petition is filed by the petitioner seeking quashing of the complaint filed against him by the respondents. The main grounds which have been alleged are that; (i) he was paying Rs. 33,000/- per month as maintenance to his wife apart from the expenses of running of the house. Undisputedly, he has been paying monthly maintenance as also the household expenses; (ii) he has given his wife fair amount of money over the years of their marriage and she has saved the same in the shape of deposits amounting Rs. 80 lakhs in her accounts; (iii) she has been seeking claims, interests and divisions in his self acquired assets, which was not permissible in the present summary criminal proceedings. In this way, she has been abusing the

benevolent provisions of the Act. Now, since they cannot live together and the house where they are living was owned by him, she is insisting to stay in this house only and wants him to leave. In this regard, it is submitted that he is willing to offer her a reasonable two bedroom accommodation in the area of similar standard, and that she has been rejecting this offer only to extort large sums of money from him and strip him completely of his earnings.

8. On all these premises, the petitioner, while maintaining his offer to maintain his daughter and continue to pay the maintenance as also the alternative residential accommodation to his wife, has sought quashing of the complaint.

9. In the present proceedings, she also claimed removal of the petitioner from the said premises where she has been living for last nine years; the educational expenses of their daughter studying in Australia; and the claim in the properties of the petitioner.

10. In reply to the present petition, the respondent wife while maintaining the behaviour and conduct of the petitioner to be aggressive, abusive etc. as mentioned in the complaint, has maintained to have right of residence in the same house where she has been living for the last about nine years, which she claims to be 'shared household' and also matrimonial home and asserts that the petitioner is liable to be removed therefrom. With regard to the offer of alternative accommodation given by the petitioner, it is stated that it does not debar her from the entitlement of the shared household in the same premises. With regard to the plea that she was being given adequate maintenance by the petitioner, it is stated that the monetary relief envisaged under Section 20 (2) of the Act presupposes the entitlement of adequate, fair and reasonable maintenance consistent with the standard of living to which aggrieved person is accustomed and which cannot be below par with that of the husband. With regard to the plea that she had savings of about Rs. 80 lakhs, it is stated that the question as to whether the petitioner has given his wife a fair amount of money over the years of their marriage as alleged by him, is a subject matter of trial. In this regard, it is also stated that she of her own had made investments of Rs. 40 lakhs under mutual funds which cannot be withdrawn and some meagre amount out of the savings made by her is lying in her saving account, which is insufficient to meet the exigencies of life and cannot be used by them for day to day living. With regard to the plea of the petitioner that the summary criminal proceedings could not be used as division or claim of properties of the husband, it is stated that as per Section 26 of the Act, any relief may be sought under Sections 18 to 22 of the Act in addition to any other relief that an aggrieved may seek before a civil or criminal court and thus, she was entitled to seek claim in the properties.

11. I have heard learned counsels for the parties and perused the record.

12. With regard to the claim of the respondent regarding aforesaid car, the petitioner is stated to be having no objection in the respondent continuing to use the same for her personal travel if it was agreed that as and when this vehicle was required for the official or business works, the same would be made available. Since she has been using said car without any objection for considerable time, I am of the view that she can be permitted to use the same exclusively for her personal travel.

13. With regard to the maintenance, there is no dispute that the petitioner has been paying Rs. 30,000/-per month in terms of the order of the M.M. passed in the complaint.

14. With regard to her seeking claim in the properties of the petitioner, the learned counsel for the respondents stated that she had a right to claim her share. I do not find myself in agreement with the learned counsel for the respondents in this regard. As per Section 26 of the Act, all the reliefs which could be claimed under the Act, could be claimed by her in any other suit or proceedings, but it nowhere provides for claiming of reliefs of shares or interests in the immovable assets of her husband by partition or otherwise. She could not claim these rights under the present summary criminal proceedings.

15. With regard to her claim of residence in the premises alleging the same to be shared household, there is no dispute. The admitted fact is that the premises in question where they both are living is a flat and that they both cannot live together any longer. On the one hand, the petitioner has offered alternative residential accommodation to his wife, who, on the other hand, has sought direction of his removal from the said premises, alleging that he can stay in the farm house at Sohna, Haryana. The question that may arise is as to whether she, while having a right of residence in the shared household where she has been living for about nine years, and that when both of them cannot live together, and the flat cannot be partitioned, whether the petitioner should be directed to remove himself or the petitioner can be directed to make arrangement of alternative accommodation. In fact, this seems to be the real bone of contention between the parties. They both are adamant to stay in this premises. The objective of providing right of residence to the wife was that she should not be left homeless by an action of the husband. In a situation like this, I cannot persuade myself to agree with the wife that the petitioner, who is the owner of the house and in view of the settlement that was arrived at between them by virtue of which she got few properties, should be directed to leave the premises and made to stay in a farm house at far away place. In the case of Ajay Kumar Jain Vs. Baljit Kaur Jain, 160 (2009) DLT 401 (DB), this court observed that a wife cannot have right to live in a particular property and the same cannot become a clog on the property denying the right of the husband to deal with the property when he is willing to provide an alternative matrimonial home to her. It was also held that she cannot insist on residing in the suit property alone when the husband had offered a suitable alternative arrangement for her. In the given facts situation, the petitioner, who undisputedly has acquired this house in his name from his earnings cannot be made to leave this house and go and suffer alone in a far away place at this age. The offer given by the petitioner seems to be quite just and reasonable and till such time alternative arrangement of a suitable two bed room accommodation is made by the petitioner for the residence of his wife, she would continue to stay there and in case, they are unable to continue to live together any longer, the petitioner would give her market rent of the two bed room accommodation in the similar locality which the Magistrate will determine after hearing both the parties. Suitable order will be passed by the Magistrate in this regard.

16. With regard to the claim of the educational expenses of their daughter, the petitioner had been maintaining that this being his responsibility, he shall bear all the expenses of education and maintenance of his daughter till she is married or able to maintain herself. That aspect will also be further determined by the M.M. as from the material available on record, it is not gathered as to whether the daughter still continues to be entitled to maintenance by the petitioner.

17. With regard to her claim seeking protection from the petitioner, so long the couple

continues to reside in the same premises, it is expected that they shall not give any cause of complaint to each other. However, protection order, if any required, will be passed by the Magistrate.

18. The scheme of the Act does not envisage passing of any restraint order against the petitioner in respect of his assets, movable or immovable except the shared household. Thus, no order can be passed restraining the petitioner in dealing with the properties in the manner he likes. The remedy, if any, in this regard, would be available to the respondents not in the present proceedings, but elsewhere.

19. There was a settlement agreement arrived at between the parties on 2.6.2011. Though copy of the settlement is not on record but, it is gathered that one of the terms of settlement was that two plots bearing Nos. 1225 & 1226, C-Biock, Sushant Lok, Phase I, Gurgaon were to be exclusively owned by the petitioner's wife. In one of the proceedings, the documents of these plots were given by petitioner to his wife. However, it was later pointed out by her that some of the documents were missing and one of the plot was in occupation of a third person. The petitioner had agreed to accompany her to the aforesaid plots and hand over the vacant possession of those plots to her. The learned M.M. will deal with this aspect and after hearing the parties, shall take appropriate measures for giving effect to this part of settlement.

20. In view of above discussion, the case is remanded back to the court of leamed M.M. to decide the remaining issues and pass appropriate orders. The parties are advised to appear before the court of M.M.on 10th July, 2012.

21. With these directions, the petition is disposed of.

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[2013] 4 EastCrC 9/ [2013] 4 JBCJ 109/ [2013] 0 Supreme(Jhar) 15752

IN THE HIGH COURT OF JHARKHAND AT RANCHI

H. C. MISHRA, J.

Rakesh Sachdeva - Petitioners
Versus
The State of Jharkhand - Opposite Parties

Cr. Rev. No. 1088 of 2012 With I.A. No.2380 of 2013
Decided On : 30.07.2013

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT :S.12,S.18, S.19,S.20,S.22

ORDER

H.C. Mishra, J.

Heard learned counsel for the petitioners, learned counsel for the State, as also learned counsel for the complainant opposite party No.2.

2. The petitioners are aggrieved by the Judgment dated 03.10.2012 passed by learned Additional Sessions Judge-11, Dhanbad, in Cr. Appeal No. 184 of 2010, whereby the appeal filed against the Judgment and Order dated 19.07.2010 passed by Smt. Veena Mishra, learned Judicial Magistrate, 1st Class, Dhanbad, in C.P. Case No. 754 of 2009/ T.R. Case No. 727 of 2010, has been dismissed by the learned Appellate Court below.

3. It may be stated that in the complaint filed under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'Act'), the petitioner No. 1, who is the husband of the complainant, has been directed to provide an alternative accommodation to the victim complainant of the same level as being enjoyed, or pay rent for the same. He has also been restrained from renouncing his rights in the shared household. The petitioner No. 1 has further been directed to make the payment of Rs.2,000/-per month for a period of 9 years and 1 month prior to the order, which comes to Rs.2,18,000/-, medical expenses @ Rs. 200/-per month for the same period, which comes to Rs.21,800/-and to make the payment of compensation of Rs.50,000/-for mental injury, and he has been further directed to make the payment of Rs.6,000/-per month towards the food, clothing, medication etc., from the date of filing of the case. All the petitioners have been directed to make the payment of Rs.10,000/ each, as compensation to the victim complainant under section 22 of the Act and they were also refrained from restraining the complainant from continued access to her personal effects in the shared household. The petitioner No. 1 has also been directed to make the payment of 50% of the arrears of Rs.6,000/-per month from May, 2009 till July, 2010, within a period of two months and the rest arrear amount and other amounts within a period of six months in three installments. In view of the fact that it was found by the Trial Court that the complainant was residing outside her matrimonial house Ishared household and as there was no evidence against which the respondents be restrained from committing domestic violence, she was not found entitled to any relief under section 18 of the Act.

4. The record shows that the complainant opposite party No. 2, filed the complaint case before the Chief Judicial Magistrate, Dhanbad, which was numbered as C.P. Case No. 754 of 2009 under the provisions of the Act. According to the complainant's case

she was married to the petitioner No. 1, Rakesh Sachdeva, as per Hindu customs on 21.2.1985, and thereafter she came to reside in the joint family house of her husband at Dhanbad. In the year 1986 the elder brother of the husband, viz., Ramesh Sachdeva, came from Punjab alongwith his family, and started living in the same house and thereafter the trouble of the complainant lady began. It is alleged that she was being subjected to mental agony by calling her as a barren lady, by the family members, except her husband, as she had not given birth to any child. Subsequently, the complainant along with her husband was shifted to the outhouse to avoid the regular unruly scenes. The younger brother of the husband of the complainant was married in the year 1988 and in the same year they were blessed with a daughter and thereafter the agony of the complainant further increased for not having given birth to any child, despite the marriage having taken place more than three years ago. She was always asked to stay away from the family functions, festivals and ceremonies and when such cruelty to the complainant further increased, the petitioner No. 1, husband brought the complainant to her brother's house on the pretext that her absence from the house would ease the situation and with a promise to take her back as soon as the situation normalized. She was however, never taken back to her matrimonial home, except for a short period when her mother-in-law died in the year 2002, when she had visited her matrimonial home. Again the petitioners continued casting aspersions against her being a barren lady and she was again brought at her brother's house. It was further alleged that while staying at her brother's house, she had taken up a job of a teacher in a local school, but there also she became a subject of talk between the teachers due to her disturbed matrimonial life, which forced her to leave her job due to mental and social stigma. All of a sudden the complainant learnt that the petitioner No. 1 had filed a Title Matrimonial Suit bearing No. 100 of 2006 against the complainant for divorce on the ground of cruelty and desertion. Claiming, that the complainant also perceived that her husband may alienate his share of the joint family property in order to deprive her of her share in the same, and stating that she had no means to maintain herself, whereas her husband was having a lucrative business of supplying earth moving machinery to B.C.C.L. and its sister concerns, the complaint was filed seeking protection under the Act.

5. Upon notice the petitioners appeared in the Court below and they filed their written statement from which it appears that the marriage between the parties is an admitted fact. Objection was taken by the petitioners in the Court below that no report had been received from the Protection Officer as required under Section 12 of the Act, and as such the complaint was not maintainable. The petitioners also denied the allegation that the complainant was ever subjected to any mental cruelty by the petitioners, and it was stated that the complainant in her W.S. filed in T.M.S. No. 100 of 2006 had stated that her husband was impotent and accordingly, the claim of the petitioner that she was being called as barren lady was absolutely false. The petitioners also denied the claim of the complainant for monetary compensation.

6. The record shows that both the parties adduced evidence in the Court below, both oral and documentary, and on the basis of the detailed discussions of the evidence on record, the Court below has found that the complainant had been able to prove that she was mentally tortured and she was subjected to domestic violence by the petitioners and that continued even after the year 1993 when she was dropped at her brother's house and not taken back in the matrimonial home.

7. The Trial Court below on the basis of the evidence on record also came to the conclusion that it was due to the social stigma, that the complaint had to leave the job of teacher. The Court below took into consideration the objection taken by the petitioners that no report had been received from the Protection Officer as required under Section 12 of the Act, and relying upon a decision of the Allahabad High Court, found that Section 12 of the Act did not mandate for calling a report from the Protection Officer, and held the complaint maintainable. The Court below however, did not find the complainant entitled to any relief under section 18 of the Act, in view of the fact that she was admittedly residing outside the matrimonial home, but she was found entitled to the relief under section 19 of the Act and the respondents were restrained from denying the continued access to the complainant to her personal effects in the shared household and the husband was also directed to provide her an alternative accommodation for which the rent was to be paid by her husband and he was also restrained from renouncing his rights in the shared household, apart from the other monetary reliefs and compensation under sections 20 and 22 of the Act, as detailed above.

8. Learned counsel for the petitioners has submitted that the impugned Judgments and Order passed by the Courts below are absolutely illegal and cannot be sustained in the eyes of law. It has been submitted that the only allegation against the petitioners as regards the domestic violence is that they ill-treated the complainant calling her a barren lady, whereas it is an admitted position in her W.S. filed in the Title Matrimonial Suit filed by the petitioner No. 1, that the petitioner No. 1 is an impotent person. It has been submitted that when the complainant realized her mistake, she tried to amend the pleadings, but the same was not allowed and all these documents have been proved in the Court below. Learned counsel has submitted that without taking those documentary proof into consideration, the Court below has held that she was being subjected to domestic violence on the ground that she was being called a barren lady and not able to bear a child. Learned counsel submitted that the admission by the complainant that the petitioner No. 1 is an impotent person, the allegation of torturing her as a barren lady, has no legs to stand.

9. It is further submitted by the learned counsel that actually the complainant treated the petitioner with cruelty and torture and she herself left the matrimonial home in the year 1993 and she never returned back thereafter. It has been submitted that it has come in the evidence that there was no telephonic conversation between the parties since the year 2007, and as such the allegation of domestic violence does not stand at all. Learned counsel has also submitted that only when the suit for divorce was filed by the petitioner No. 1 on the ground of cruelty and desertion, the complainant filed the instant complaint and she has also filed an application for restitution of conjugal rights.

10. Learned counsel has further submitted that the allegation that she had left the job of a teacher due to social stigma is absolutely false. In this connection learned counsel has placed reliance upon the documents filed and proved by the complainant herself, to show that she was working in the school. These documents were marked as Exhibits-'1' and '2' which only show that the petitioner was working in the school satisfactorily. There is nothing in these documents to show that the petitioner had left the job due to any social stigma as alleged by her.

11. It is next contended by learned counsel for the petitioner that the Court below has

not given any finding as regards the income of the petitioner and accordingly, the monetary reliefs and compensation could not have been granted by the Courts below without giving a finding about the income of the petitioner. In this connection learned counsel has placed reliance upon the decision of the Orissa High Court in Manorama Swain Vs. Giridhari Swain, reported in, (1993) 3 RCR (Cri.) 279. Learned counsel has also placed reliance upon a decision of the Rajasthan High Court in Madhu Sudan Vs. Pushpa @ Bhawana, reported in (1987) 2 RCR (Cri.) 144, wherein it has been held that when the order of maintenance pendentelite is not supported by reasons and does not discuss the pros and cones of rival versions of the parties relating to the quantum of income of the husband, the order is liable to be set-aside.

12. Lastly, it has been submitted by learned counsel for the petitioners that the impugned orders granting monetary relief to the complainant under section 20 of the Act have been granted for a period of nine years and one month from the date of order, which was passed on 19.7.2010, and accordingly this period goes back to sometimes in the year 2001, when the Act itself was not in force and accordingly, the monetary relief has been granted to the complainant with retrospective effect from prior to the coming of the Act into force, which cannot be allowed. With these submissions learned counsel for the petitioners has submitted that the impugned Judgments are absolutely illegal and are fit to be set aside.

13. Learned counsel for the State, as also learned counsel for the complainant opposite party No. 2, on the other hand have opposed the prayer and have stated that the Courts below have discussed the evidence in detail and have come to the conclusive finding that the complainant was being subjected to domestic violence since the year 1986 itself, and ultimately she was dropped at her brother's place in the year 1993 and the domestic violence continued to her even thereafter, due to the social stigma of being a deserted women, due to which she had to leave the job of teacher in the school, as she was not able to bear the social stigma. Learned counsel has submitted that domestic violence has been defined in Section 3 of the Act, which includes the verbal, emotional and economic abuses, as well as mental injury, and accordingly, it cannot be said that the complainant was not subjected to domestic violence by the petitioners. Learned counsel has submitted that even if the complainant had stated in the written statement that her husband was impotent, this in itself is not sufficient to disbelieve the evidence of the complainant that she was being characterized as a barren lady due to the fact that she did not bear any child. Learned counsel further submitted that the complainant in her cross-examination has clearly stated that the petitioner had to leave the job of the school due to the social stigma which she was not able to bear, and accordingly it cannot be said that since there is nothing in the Exts-1 & 2 to show that she had left the job of the teacher in the school due to the social stigma, the same was not proved.

14. Learned counsel further submitted that the petitioner No. 1, who had examined himself as D.W.-1 in the Court below, had admitted in his cross-examination that he is a Mechanical Engineer and presently he is running a firm which deals in earth moving machines' spares, and he is running the firm since 1991 itself. It is submitted by learned counsel for the complainant that since no income was disclosed by the petitioner from his business, in view of the admitted fact that the petitioner was running the said business, the Court below found that the petitioner No. 1 is a man of means, and has also held that the complainant has no source of income and

accordingly, allowed the monetary reliefs and compensation to the complainant under Sections 20 and 22 of the Act.

15. Learned counsel for the petitioner has also submitted that it is well settled principle of law that the Courts may take into consideration the conduct of the parties even prior to the coming into force of the Act, and as such, there is no illegality in allowing the monetary relief and compensation with the retrospective effect. In this connection learned counsel has placed reliance upon the decision of the Supreme Court of India, reported in V.D. Bhanot Vs. Savita Bhanot, reported in (2012) 3 SCC 183, wherein it has been held as follows:-

    "12. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof. In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005:

    Placing reliance on this decision, learned counsel submitted that there is no illegality in the impugned Judgments and Order passed by the Courts below, worth interference in the revisional jurisdiction.

16. After having heard learned counsels for both the sides and upon going through the record, I find that the Trial Court as well as the Appellate Court below have dealt with the evidence led by both the parties, both oral and documentary, and have come to the conclusion about the domestic violence, to which the complainant opposite party No. 2 had been subjected to. As the findings of the Courts below are based on the evidence on record, the same cannot be interfered with in the revisional jurisdiction. All the findings in the impugned Judgments regarding the domestic violence to which the complainant was subjected to, by the petitioners right from the year 1986, when the elder brother of the husband came and started living in the same house, which continued even after 1993 when the complainant was left by her husband at her brother's place, are fully supported by evidence. The definition of domestic violence as given in Section 3 of the Act clearly embraces the verbal, emotional and economic abuses, as also the mental injury to the victim, and accordingly, no fault can be found in the Judgments passed by the Courts below finding that the complainant was subjected to domestic violence by the petitioners. Similarly, even the finding by the Court below that the complainant had to leave the job due to social stigma attached to a deserted lady, is also based on the evidence on record and the same cannot be interference with.

17. Thus, I do not find any illegality and/or irregularity in the impugned Judgments and Order passed by the Courts below, finding that the complainant had been subjected to domestic violence and she is entitled to the protection under the Act.

18. Similarly, I do not find any merit even in the submission of the learned counsel for the petitioner that the Court below has not given any finding as regards the income of the petitioner. The petitioner No. 1, who had examined himself as D.W.-1 in the Court below, had admitted in his cross-examination that he is a Mechanical Engineer and presently he is running a firm which deals in earth moving machines' spares, and he is running the firm since 1991 itself. Since no income was disclosed by the petitioner from his business, the Court below has found that the petitioner No. 1

is a man of means, and accordingly, has rightly allowed the monetary reliefs and compensation to the complainant, and the same cannot be said to be excessive, taking into consideration the nature of the business of the husband.

19. This takes us to the last submission of the learned counsel for the petitioner that some of the monetary reliefs under Section 20 of the Act have been allowed with retrospective effect from prior to the coming into force of the Act. The petitioner No. 1 has been directed to make the payment of Rs.2,0001-per month for a period of 9 years and 1 month, as also the medical expenses @ 2001-per month for the same period, which clearly shows that these monetary reliefs under Section 20 of the Act have been allowed to the complainant sometimes from the year 2001. The Protection of Women from Domestic Violence Act, 2005, came into force with effect from 26.10.2006, and this clearly shows that the said monetary reliefs have been granted to the complainant with retrospective effect from prior to the coming into force of the Act. In my considered view, this is a clear violation of Article 20 (1) of the Constitution of India. It is a well settled principle of law that the penal provisions do not operate retrospectively. {Authority: Ha it Singh Vs. State of Punjab, reported in (2011) 4 sec 441}. However, I do not find any illegality and Ior irregularity in the other directions, monetary reliefs and compensation allowed by the Trial Court below, worth interference in the revisional jurisdiction.

20. In view of the aforementioned discussions, the monetary reliefs granted to the complaint opposite party No. 2, under Section 20 of the Act, which have been allowed for the period of 9 years and 1 month, are hereby, set aside, and it is directed that the same may be recalculated at the same rates as allowed by the Court below, with effect from the coming into force of the Act, and not prior to that date. With this modification in the impugned Judgment and Order dated 19.7.2010 passed by Smt. Veena Mishra, learned Judicial Magistrate, st Class, Dhanbad, in C.P. Case No. 754 of 2009 I T.R. No. 727 of 2010, this application stands dismissed.

21. Accordingly, I.A. No. 2380 of 2013 filed by the complainant opposite party No. 2, for vacating the stay order dated 7.2.2013, also stands disposed of.

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[2011] 0 Supreme(Jhar) 128861 [2011] 4 JLJR 299/ [2012] 1 JCR 153 2011 (4) JLJR 299

IN THE HIGH COURT OF JHARKHAND AT RANCHI

PRASHANT KUMAR, J.

Swarup Mandai.-.Petitioner
Versus
The State of Jharkhand & Anr- Opp.party

Cr. Revision No.130 of 2010
Decided on : 13.10.2011

A) Protection of Women from Domestic Violence Act, 2005-5ection 12:- It is not illegal for the Magistrate to pass an order under the Act without looking into a report of the Protection Officer or service provider unless the Protection Officer or service provider suo motu submitted any report with regard to a domestic incident to him.(Paras 9 to 11)

B) Protection of Women from Domestic Violence Act, 2005-Section 12:- A direction given by the Magistrate to pay the medical expenses of the aggrieved person on the basis of oral and documents produced is a finding of fact on the basis of evidence and cannot be interfered in the revision jurisdiction by High Court. (Para 13}

C) Protection of Women from Domestic Violence Act, 2005-section 12- Discharge of the respondent from the complaint case also filed u/ss. 498A 279 and 323, IPC has no relevance under this Act in the present case.(Para 12)

INDIAN PENAL CODE : 5.323, 5.379, S.498(a)l PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT : 5.12

Order

This revision application is directed against the order dated 05.01.2010 passed by Sessions Judge,Jamtara in Criminal Appeal No. 17 of 2009, whereby with modification in quantum of maintenance allowance he dismiss the appeal filed against the order dated 09.09.2009 passed by Chief Judicial Magistrate, Jamtara in Cr. Misc. (DV)case no. 03 of 2009.

2. It appears that O.P.No.2 has filed an application under section 12 of Protection of Women from Domestic Violence Act, 2005 (hereinafter refer as RAct") for grant of maintenance as the petitioner, (husband of O.P.No.2) had committed domestic violence upon her. It further appears that Chief Judicial Magistrate had issued notice to the petitioner and, thereafter, petitioner filed written statement. Then, both the parties adduced evidence in support of their case. It further appears that Chief Judicial Magistrate, Jamtara while passing order dated 09.09.2009 had come to the conclusion that petitioner committed domestic violence and, accordingly, directed the petitioner to pay maintenance allowance to O.P.No.2 to the tune of Rs. 4000/- per month. He further directed that petitioner should pay Rs. 2000/ towards maintenance of his son. The Chief Judicial Magistrate further directed the petitioner to pay Rs. 25,000/- towards medical expenses and Rs. 30,000/- towards damages caused to the "Stridhan" of O.P.No.2. It appears that aforesaid order of Chief Judicial Magistrate was challenged by the petitioner by filing Criminal Appeal No. 17 of

2009 in the court of Sessions Judge, Jamtara, which was dismissed vide order dated 05.01.2010 with modification in the maintenance allowance payable to O.P.No.2 and her son. Learned Sessions Judge directed that petitioner shall pay . 2500/- per month to? O.P.No.2 and Rs. 1500/- per month to her son as maintenance allowance.

3. While assailing aforesaid two orders, learned counsel for the petitioner submits that as per proviso to Section 12 of the Act , it is imperative upon the Magistrate to call for a report from the Protection Officer and consider the same before passing any final order on the application filed by aggrieved person. It is submitted that in the instant case, Magistrate has not called any report from the Protection Officer and passed order without considering it. Hence, order of Chief Judicial Magistrate cannot be sustained. It is further submitted that for the same relief, O.P.No.2 had filed a complaint case bearing P.C.R.Case no. 385/2006 under section 498A,379 and 323 I.P.C. It is submitted that in aforesaid case petitioner was discharged from the said complaint case because no witness was produced by the complainant in that case. Accordingly, it is submitted that the present application under section 12 of the said Act is not maintainable.

4. It is further submitted that O.P.No. 2 has not produced any medical bill showing that she incurred Rs. 25,000/- towards her medical expenses. Thus, the order of the learned courts below awarding medical expenses is liable to be set aside. It is also submitted that no report of Nephrologist has not been filed to show that O.P.No.2 was suffering from Kidney disease. Thus finding of the court below that she was suffering from kidney disease cannot be sustained.

5. On the other hand, learned counsel for the O.P.No.2 submits that as per proviso to section 12 of the Act a Magistrate is required to consider the report of Protection Officer, provide the same was received in his court. If the Protection Officer did not submit any report, then in that case it is not mandatory for the Magistrate to call for a report from the Protection Officer and consider the same.

6. It is further submitted that admittedly, in this case, report of Protection Officer has not been received in the court of Chief Judicial Magistrate, Jamtara. Under the said circumstance, non-consideration of said report before passing impugned order have no bearing on it.

7. It is further submitted that petitioner has been discharged in P.C.R case because no witness was produced in that case, whereas in the present case maintenance allowance granted in favour of opposite parties after considering evidence adduced by both the parties. Thus, discharge of petitioner in the aforesaid case has no bearing in the impugned orders. It is further submitted that O.P.No.2 has filed prescription issued by medical practitioner to show that she was suffering from Kidney disease as well as other ailments. Learned counsel further submitted that it has come in the evidence of all the witnesses examined by the O.P.No.2 that she made huge expenses towards her medical treatment and the said statement of witnesses had not been challenged by the petitioner. Accordingly, it is submitted that orders of the courts below awarding medical expenses are legal and require no interference.

8. Having heard submissions of the learned counsel, I have gone through the record of this case. Sub-Section (1) of Section 12 of the 'Act' reads as follows:

12.Application to Magistrate -(1) An aggrieved person or a Protection Officer or any

other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act.

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider."

9. From perusal of the Sub-section (1) of Section 12 of the Act, it is apparent that aggrieved person can also file an application seeking one or more relief enumerated in the Act. Proviso to Sub-section (1) of Section 12 made it imperative upon a Magistrate to take into consideration any domestic incident report of Protection Officer or service provider if the same is received by him.

10. From perusal of aforesaid provision of law, it is clear that it is not imperative for the Magistrate to call for a domestic incident report from Protection Officer or service provider. It only make it mandatory that if Protection Officer or service provider suo motu send a report to the Magistrate the same must be considered by him before passing any order.

11. Admittedly, in this case, no domestic incident report received in the court of the Chief Judicial Magistrate, Jamtara either from Protection Officer or service provider Under the said circumstance, there was no report before the Chief Judicial Magistrate which he could consider before passing impugned order. Accordingly, I find no illegality in this respect.

12. Now, coming to second contention , it is 'NOrth mentioning that in the complaint case, petitioner was discharged, because no evidence was produced in that case. Thus, discharge of petitioner in the aforesaid complaint case have no bearing on the result of this case. Hence, I find no merit in the second contention of the learned counsel for the petitioner.

13. I further find that learned Sessions Judge and learned Chief Judicial Magistrate had concluded that O.P.No.2 was suffering from kidney disease on the basis of oral and documentary evidence produced by O.P.No.2. Thus aforesaid finding which is purely a finding fact does not require any interference by this Court in exercise of its revisional jurisdiction, unless petitioner shows that the same are perverse. It is needless to say that petitioner failed to do so.

14. Under the said circumstance, I find no merit in this revision, which is, accordingly, dismissed.

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[2012] 0 Supreme(AP) 37430/ [2012] 0 CrLJ 3462/ [2012]3 ALT(Cri) 163

HIGH COURT OF ANDHRA PRADESH

G. BHAVANI PRASAD, J.

A. Ashok Vardhan Reddy & Others
Versus
Smt. P. Savitha & Others

Criminal Petition Nos.7063 of 2008 and 2539 of 2009
Decided on : 29-02-2012

JUDGMENT

The petitioners in Criminal Petition No.7063 of 2008 are accused 1 to 3 in C.C. No.48 of 2008 on the file of the II Metropolitan Magistrate, Cyberabad at LB. Nagar, Ranga Reddy District.

2. The Woman Sub-Inspector of Police, Saroomagar women police station filed the charge-sheet in the said case alleging that P. Krishna Reddy and P. Kalavathi are the parents of Saritha, the 1st respondent in Criminal Petition No.7063 of 2008. Saritha was married to the 1st accused on 27-08-2005 and on the same day the 1st accused and Saritha left for the United States of America, as Saritha had to report at West Virginia University on 29-08-2005. Soon after arriving at the United States of America, the 1st accused demanded Saritha for money and took away 35 tulas of gold from her. The parents of Saritha visited the United States of America from 12-10-2005 to 07-11-2005 and still the 1st accused harassed Saritha physically and mentally and threatened her and her parents. Saritha gave a complaint to West Virginia University police and requested her father to give a complaint to the police in India. Accordingly, P. Krishna Reddy gave a complaint on 30-10-2006 stating the above facts and further stating that he met all the expenses demanded by accused 1 to 3 at the time of the marriage and the demand of the 1st accused to Saritha was to give Rs.4,00,000/-. Her gold was sold away by the 1st accused and the sale proceeds were appropriated by him. The 1st accused was using the credit cards of Saritha being unemployed. The complaint was registered as Crime No.1098 of 2006 under Section 498A of the Indian Penal Code and Sections 3 and 4 of Dowry Prohibition Act and was investigated into. The 2nd and 3rd accused surrendered before the Court on 20-12-2007 and were released on bail, while the 1st accused was absconding. Hence, the charge.

3. Accused 1 to 3 claimed in the criminal petition that when the couple left for the United States of America on the date of marriage itself, it was impossible to presume any demand for money and though the 1st accused returned to India on 09-03-2006, Saritha/1st respondent stayed back in the United States of America, filed a petition for divorce before the Family Court of Monongalia County, West Virginia, United States of America and was granted a decree of divorce by an order, dated 12-03-2007, which had become final. The 1st respondent is working in the United States of America after obtaining divorce. The police initially submitted a final report on the complaint of Krishna Reddy, referring the case as lacking in jurisdiction on 18-09-2007 and again at the request of the 1st respondent on 22-10-2007, the case was reopened and further investigated. The petitioners contended that the 1st petitioner

and the 1st respondent never led their marital life in India and they are no longer wife and husband having lived together in the United States of America only for 5 months andc10 days. Hence, they desired quashing of further proceedings in C.C. No.48 of 2008.

4. The 1st respondent in her affidavit in Criminal M.P. No.28 of 2009 claimed that the petition should have been filed against P. Krishna Reddy, her father, who gave the complaint to the police. She was misdescribed as Savitha, while she is Saritha. The criminal proceedings are independent of the civil proceedings and even the air ticket for the 1st accused for the travel on 27-08-2005 was purchased by Krishna Reddy. The 1st accused was demanding an additional dowry of Rs.30,00,000/-to repay the loans he incurred at Singapore and India. His parents also followed up the demand through telephone calls to her and her father. The 1st accused severely beat her in the presence of her parents in the United States of America. The 1st accused was spending money for alcoholic drinks while residing with her in her hostel room. The 2nd accused met Krishna Reddy at Hyderabad on 30-03-2006 and 8-10-2006 and the 1st accused met him on 27-08-2006 when the demand for Rs.30,00,000/- was reiterated and the 1st respondent was also in India on 27-08-2006. Krishna Reddy was authorized by the 1st respondent through Internet on 09-09-2006 to give a complaint to the police. The divorce case was subsequent. Both the 1st respondent and the 1st accused are Indian citizens and so are their parents. The 1st accused and the 1st respondent resided in both the countries and the divorce was granted on the basis of cruel and inhumane treatment. The 1st accused returned to India in March, 2007 to avoid action by the United States police. The 1st respondent returned to India after completion of her M.S. and is unemployed and unmarried. There was no compromise between the parties and the 1st respondent is suffering from mental agony and shock, while the 1st accused got remarried immediately. Hence, the 1st respondent desired that the interim stay granted be vacated and the criminal petition be dismissed.

5. While so, the petitioners in Criminal Petition No.7063 of 2008 filed Criminal Petition No. 2539 of 2009 to quash the proceedings in D.V.C. No.4 of 2009 on the file of XI Metropolitan Magistrate, Cyberabad initiated against them by Saritha who is impleaded as the 2nd respondent in Criminal Petition No.2539 of 2009.

6. In the domestic violence case, Saritha, the 2nd respondent in Criminal Petition No. 2539 of 2009, sought for protection orders, return of 'Sthridhana', monetary relief, compensation, damages and other appropriate reliefs under the Protection of Women from Domestic Violence Act, 2005 (for short "the Act'') against the petitioners in Criminal Petition No. 2539 of 2009. She also desired for cancellation of the passport of the 1st petitioner, and the total amount claimed by her was Rs.48.80 lakhs. She also alleged the petitioners herein to have committed other offences covered by another crime and alleged in her affidavit that her residence with the respondents to the case at Hyderabad and the United States of America was from 28-08-2005 to 12-03-2006. She alleged being threatened with adverse publicity, character assassination and personal vilification. She claimed to have been subjected to beating, abusing, misbehaving, demanding money and mental and bodily injury by all the respondents to the case and she claimed that by the memorandum of understanding dated 11-05-2007, the 2nd petitioner admitted that he and his son took amounts to a tune of Rs. 8,00,000/- from Krishna Reddy, which he promised to return. She claimed that the

1st petitioner herein already got married to somebody else and that she returned to India in September, 2007.

7. The petitioners in Criminal Petition No.2539 of 2009 contended that the 1st petitioner and the 2nd respondent lived together only for two months, while the 2nd respondent lived separately for about four months in the United States of America for pursuing her studies in M. S. There were differences between the couple since the date of marriage and the husband was subjected to mental and physical cruelty leading to separate living. The petitioners claimed that the XI Metropolitan Magistrate, Cyberabad took cognizance of the complaint by the 2nd respondent in D.V.C. No.4 of 2009 concerning the alleged domestic violence prior to the statute coming into fonce with effect from 26-10-2006. The domestic violence case could not have been pursued against a woman, the 3rd petitioner, in view of Section 2(q) of the Act. The Act is not applicable to a divorced woman, as an aggrieved person under Section 2 (a) has to be a woman who is or has been in a domestic relationship with the respondent. There was no domestic incident report from the protection officer or service provider and a direct complaint is not contemplated by the Act. After C.C. No.48 of 2008, filing of the domestic violence case is invoking parallel jurisdiction of Courts and hence, the petitioners desired the further proceedings in D.V.C. No.4 of 2009 to be quashed.

8. In the affidavit of the 2nd respondent in Criminal M.P. No.3330 of 2009, the 2nd respondent stated that she and the 1st petitioner resided on the date of the marriage at the residence of the petitioners at Champapet, Hyderabad. The petitioners received Rs.5.25 lakhs at the time of the marriage and a total of Rs.17.25 lakhs was appropriated by the 1st petitioner through gold, credit cards and bank account of the 2nd respondent. The 2nd respondent was even hospitalized in the United States of America due to beating. The 1st petitioner was necked out of the hostel on 12-03-2006 due to his unbearable behaviour. But still he was harassing the 2nd respondent through telephone, e-mail and entering the hostel, etc. The 2nd petitioner approached P. Krishna Reddy and signed a memorandum of understanding on 11-05-2007 with the intervention of some elders agreeing to pay back Rs. 8,00,000/- and the same was deposited in a joint account in HDCCB, Vanasthalipuram. Again the entire amount was withdrawn on 18-06-2007 by impersonation resulting in crime No.171 of 2008 of Vanasthalipuram police station. The VII Metropolitan Magistrate, Hayathnagar, Cyberabad ordered on 04-09-2008 reinvestigation by the police, but the petitioners are unlawfully influencing the police. D.V.C. No.4 of 2009 is, hence, in continuation of the earlier proceedings and an application under Section 12 of the Act need not be routed through police or the protection officer. The petitioners are only respondents in the case and not accused, as the case is civil in nature. A criminal petition to quash the proceedings is, hence, not maintainable in view of the very statement of objects and reasons of the Act. As the divorce was only on 12-03-2007 and as the harassment and cruelty were continued by the 1st petitioner and cheating by the 2nd petitioner after the memorandum of understanding on 11-05-2007 was subsequent to 26-10-2006 when the Act came into force, the case is maintainable. The provisions of the Act are retrospective, as Section 2 (a) refers to a 'woman' who has been in a domestic relationship and Section 2(f) refers to two persons who have lived together in a shared household at any point of time. The acts of the petitioners amount to domestic violence in a series of events, concerning which no question of limitation arises. The Proviso to Section 2(q) makes the 3rd petitioner also liable

and in view of Section 36 of the Act, which makes the Act not in derogation of any other law, the domestic violence case and the criminal case are independent of each other, more so, in view of Section 26 of the Act. Hence, the 2nd respondent sought for vacating the interim stay granted and desired this criminal petition also to be dismissed.

9. While the interim stay granted in Criminal Petition No.7063 of 2008 was made absolute on 26-12-2008, the interim stay granted in Criminal Petition No.2539 of 2009 did not appear to have any specific order of extension after 14-07-2009.

10. Heard Sri T. Pradyumna Kumar Reddy, learned counsel for the petitioners in Criminal Petition No.7063 of 2008, Sri Sharad Sanghi, learned counsel for the petitioners in Criminal Petition No.2539 of 2009 and Sri P. Krishna Reddy, learned counsel representing the 1st respondent in Criminal Petition No.7063 of 2008/the 2nd respondent in Criminal Petition No. 2539 of 2009.

11. On the material placed on record by both the parties, the following factual background emerges. P. Saritha and A. Ashok Vardhan Reddy, daughter of P. Krishna Reddy and P. Kalavathi and son of A. Jani Reddy and A. Vijayamma respectively, were married at Hyderabad on 27-08-2005 and both are Indian citizens with visas of the United States of America. The couple left for the United States of America on the same day. A decree of divorce was granted by the Family Court of Monongalia County, West Virginia, United States of America on 12-03-2007 on the basis of cruel and inhumane treatment with liberty to distribution of marital estate and alimony. In the meanwhile, P. Krishna Reddy gave a complaint to Saroomagar police on 30-10-2006, which was registered in Crime No.1098 of 2006 and was charge-sheeted against A. Ashok Vardhan Reddy and his parents in C.C. No. 48 of 2008 on the file of the II Metropolitan Magistrate, Cyberabad at L.B. Nagar, Ranga Reddy District under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. While so, Saritha filed an application under Section 12 of the Act against A. Ashok Vardhan Reddy and his parents, taken cognizance by the XI Metropolitan Magistrate, Cyberabad in D.V.C. No.4 of 2009. Both the criminal petitions are with a request to quash the respective proceedings.

12. Apart from the above admitted background, the claims of P. Saritha in her affidavit and the contents of the copies of documents filed by her allege that the moment the couple reached the United States of America, the 1st accused demanded for a sum of Rs.4,00,000/ and then an additional dowry of Rs.30,00,000/-, which demands were also supported by his parents through telephone calls to Saritha and Krishna Reddy. The parents of Saritha were claimed to be in the United States of America from 12-10-2005 to 07-11-2005, even in whose presence there were demands for money and physical and mental violence. The 1st petitioner was claimed to be unemployed and to be an alcoholic, spending gold, money and funds in the bank account of Saritha for such purpose. The demands for money were claimed to have been made by the 2nd petitioner on 30-03-2006 and 08-10-2006 and by both the 1st and 2nd petitioners on 27-08-2006 at Hyderabad, while Saritha was also at Hyderabad on 27-08-2006. The copies of the report of the West Virginia University Health Services, dated 27-03-2006, the statement of Saritha dated 23-03-2006, the case reports of the West Virginia Department of Public Safety, dated 23-03-2006 and 19-05-2006 and the final divorce decree granted by the Family Court of Monongalia County, West Virginia, dated 12-03-2007 indicate Saritha to be complaining of domestic

abuse and violence and the Family Court to have granted an ex parte decree on the finding of the parties cohabiting together till 09-03-2006 and Saritha to be entitled to absolute divorce on the basis of cruel and inhumane treatment. Subsequently, a memorandum of understanding was claimed to have been executed by the 2nd petitioner in favour of Krishna Reddy with the intervention of some elders on 11-05-2007 agreeing to pay Rs.8,00,000/-. The amount was claimed to have been withdrawn by impersonation from the joint account resulting in crime No.171 of 2008 on the file of Vanasthalipuram police station. The documents accompanying Criminal M.P. No.3330 of 2009 in Criminal Petition No.2539 of 2009 further show the break up of Rs.17,70,000/- said to have been spent by Krishna Reddy at the time of marriage, a copy of memorandum of understanding between the 2nd petitioner and Krishna Reddy, dated 11-05-2007, a report by the son of Krishna Reddy to the police about withdrawal of Rs.8,00,000/-, the order of the Magistrate's Court directing investigation in Criminal M.P. No.3155 of 2008, etc. A copy of e mail message of the 1st petitioner to the family of Saritha about the divorce proceedings and copies of documents relating to C.C. No.1954 of 2000 on the file of the Additional Judicial Magistrate of First Class, Hyderabad East and North, Ranga Reddy District against Krishna Reddy and two others were also filed during hearing. A copy of passport of Saritha was also filed during hearing in corroboration of her alleged movement from and to India. In so far as C. C. No.1954 of 2000 is concerned, any conduct of Krishna Reddy leading to his prosecution by his wife is an irrelevant factor for consideration of these two criminal petitions on merits and the nature or conduct of Krishna Reddy is no probablising factor or proof of the probable conduct of Saritha or the 1st petitioner herein vis-a-vis their matrimonial relationship.

13. Even regarding the truth or otherwise of the various allegations made by the opposing parties concerning the sequence of events that ultimately led to these two criminal petitions, in a restricted summary enquiry in the petitions under Section 482 of the Code of Criminal Procedure invoking the inherent powers of this Court, the High Court will not convert itself into a fact finding Court and it will not indulge in an elaborate trial and conclusive findings of fact regarding the questions in controversy between the parties. The examination of the issues of fact and law raised and adjudication of the same will be confined to the extent of considering any justification for invocation of the inherent powers of the High Court to interfere with the proceedings before the trial Courts in question.

14. The well settled parameters governing the exercise of the inherent power under Section 482 of the Code of Criminal Procedure should be kept in mind while examining the questions in issue. Illustratively, in VenkateswaraRao v. Venkateswarlu (1992 (J) AU466), it was held that when the very conduct of the petitioner led to criminal proceedings, it will be an abuse of process of Court for him to seek quashing of the proceedings under Section 482 of the Code of Criminal Procedure. In Papa Rao v. State (2002 (1) ALT (Crl.) 300 (D.B.) (A.P.), a Division Bench of this Court laid down that the power under Section 482 of the Code of Criminal Procedure has to be used very sparingly and in exceptional circumstances very cautiously.

15. With this caveat, the first question that arises is the maintainability of the domestic violence case against a woman/the 3rd petitioner in Criminal Petition No.2539 of 2009.

16. The petitioners relied on UmaNarayanan v. Priya Krishna Prasad (2008 (TLS)

1227198), wherein Ajay Kant v. Alka Sharma (2008(2) Crimes 235 (M.P.)was relied on for the principle that an application under Section 12 of the Act against persons, who are not adult male persons, is not maintainable. The learned Judge agreed with the view and held that an application under Section 12 of the Act is not maintainable as against a woman in view of Section 2(q) read with Sections 19, 31 and 33. S.R. Batra v. Taruna Batra (2006 (TLS) 43393) was also relied, but the Supreme Court was dealing with the question whether the daughter-in law can claim any right of residence in the house belonging to the mother-in-law and not the husband, and not the question as to whether a domestic violence case is maintainable against a woman as a respondent. However, in Criminal Petition No.4106 of 2008, dated 22-10-2008, a learned Judge of this Court followedAjay Kant v. Alka Sharma (4 supra) to hold that female members cannot be made as respondents in the proceedings under the Act. Thereafter, a Division Bench of this Court considered in AfzalunnisaBegum v. State of Andhra Pradesh (2009 (2) ALD (Crl.) 155 (AP)the entire issue with reference to Sections 2(f), 2 (q), 3, 12, 18, 19, 21 and 31 of the Act and the Statement of objects and reasons for the Bill. The Division Bench opined that giving effect to all the provisions in the Statute, the Act does not exclude 'woman' altogether in a proceeding initiated under the Act and the 'respondent' as defined in Section 2(q) of the Act includes a female relative of the husband depending upon the nature of the reliefs claimed against the respondent in the domestic violence case.

17. The matter is set at rest beyond controversy by the decision of the Apex Court in SandhyaManoj Wankhade v. Manoj Bhimrao Wankhade (2011 (2) MLJ (Cri) 429), wherein the Court of Session and the High Court held females to be not included in the definition of 'respondent' in Section 2(q) of the Act. The Supreme Court held that the Proviso to Section 2 (q) widens the scope of the definition of a 'respondent' by including a relative of the husband or male partner and as no restrictive meaning has been given to the expression 'relative' nor has the said expression been specifically defined in the Act, it is clear that the Legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Act. A.N. Sehgal v. Raje Ram Sheoram (,AIR 1991 SC 140§) relied on by the petitioners for guiding the interpretation of Proviso to Section 2 (q) needs no further reference in view of the binding precedent from the Apex Court on Section 2 (q) Proviso itself. As the female relatives of the husband or male partner are, thus, not excluded from the applicability of the Act, if it is otherwise applicable, the domestic violence case against the 3rd petitioner cannot, therefore, fail on the ground of her sex.

18. The decision in Chandra Rekha v. State of Andhra Pradesh (2010 (2) ALD (Crl.) 689 (AP)is to the effect that mere impleadment of petitioners in domestic violence case does not give rise to criminal offence to quash the proceedings at the initial stage. The decision incidentally, thus, casts doubts on the maintainability of a petition under Section 482 of the Code of Criminal Procedure for quashing the proceedings at the initial stage before any respondent can be punished for any offence under the Act or has been facing proceedings calling for such punishment.

19. The decision in Mohammad Maqueenuddin Ahmed v. State of A.P. (2007 Cri.L.J. 3361 = 2007(2) ALD (Crl.) 248) may not be of any assistance, as the question of liability of any of the petitioners 2 and 3 to the reliefs claimed in the domestic violence case cannot be considered to have crystallized even at the initial stage when the reliefs sought for were directed against all the three petitioners and Saritha cannot

be considered, ex facie, to be disentitled to such reliefs, if she is able to prove her allegations during the enquiry. The sufficiency or otherwise of the allegations made is for the trial Court to determine and not for this Court to go into.

20. The next question raised is about the events leading to the domestic violence case happening much prior to 26-10-2006 when the Act came into force and the Act having no retrospective effect.

21. The petitioners relied on Anil Kumar Goel v. Kishan Chand Kaura (AIR 2008 SC 899), wherein the Apex Court held that all laws that affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity, if they affect vested rights and obligations, unless the legislative intent is clear and compulsive. It was, hence, pointed out that the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. Similar is the principle laid down in State of M.P. v. Rameshwar Rathod (AIR 1990 SC 1849), wherein the normal rule of construction is stated to be that a provision in a statute is prospective but not retrospective. In that case, not only there are no specific words to indicate the provisions of retrospective effect, but the positive provisions are to the effect that the amendment must be deemed to have come into effect on a particular date.

22. General principles apart, a learned Judge of this Court held in U.U. Thimmanna v. U. U. Sandhya (2009(1) ALT (Crt.) 285 (A.P.)that it is a fundamental principle of law that any penal provision has no retrospective operation, only prospective and as there was no allegation in that case either in the report or in the statement or in the complaint of the 1st respondent therein with regard to the acts of domestic violence that took place on or after 26-10-2006 when the Act came into force, the continuation of the proceedings in the domestic violence case was held to be an abuse of process of Court.

23. The above decision was cited before the Court in K. Ramaraju v. K. Lakshmi Pratima (2008(2) ALD (Crl.) 1 (AP), wherein it was consequently noted that it is true that Section 1(3) of the Act made the statute come into force from the appointed date as per Gazette Notification, which notification brought the Act into force from 26-10-2006. It was also noted that neither Section 1 nor any other provision directly or indirectly indicates any retrospective effect to the provisions of the statute. However, without going into the question whether the provisions of the Act can be retroactive in relation to any continuing events amounting to domestic violence as defined under Section 3 of the Act, it was opined that irrespective of any retrospective or retroactive effect to the provisions of the Act, the continuing state of affairs since the date of the Act coming into force, ex facie, make the petitioner have the required cause of action for pursuing a remedy under Section 12 of the Act for obtaining necessary orders or reliefs. The reliefs claimed were opined to be in present time and not past.

24. Hon'ble Sri Justice K.C. Bhanu, who decidedU.U. Thimmanna v. U.U. Sandhya (13 supra), was again considering the question in MohitYadam v. State of Andhra Pradesh (2010 (1) ALD (Cri.) 1 (AP)and made it clear that the object of the Act is to provide for effective protection of the rights guaranteed under the Constitution, of women, who are victims of violence of any kind occurring within the family. His Lordship after an exhaustive reference to the principles of statutory interpretation, had also noted that no specific finding was given in K. Ramaraju v. K. Lakshmi Pratima (14 supra) as to whether the Act is retrospective or prospective in operation. The learned

Judge noted that none of the provisions of the Act has direct penal consequences and as seen from the provisions of the Act, some new remedies are provided to the women with regard to existing rights. The remedies did not alter the contract or right nor had it taken away any vested right. The learned Judge also pointed out that the words 'at any point of time' and 'lived together' cannot be understood in narrow sense so as to mean that such living together is only after the Act came into force. The leamed Judge concluded that in its sweep, shared household between two persons by relationship as defined in Section 2(f) of the Act would commence from the date of marriage, adoption, consanguinity or joint family. Making it clear that in deciding the question of applicability of particular remedial statute to past events, the language used is no doubt most important factor to be taken into account, the learned Judge stated the same to be not positively stated as an inflexible rule but use of present tense or present perfect tense is decisive of the matter that the statute does not draw upon past events for its operation. Referring to the words 'who is' or 'has been' in Clause (a), 'who live or have' in Clause (f), 'who is, or has been' in Clause (q) of Section 2 of the Act, the learned Judge opined that they may denote the events happened before or after the Act came into force. The learned Judge also noted that there cannot be any dispute that present perfect tense is used to denote the action beginning at some time in the past and continue up to the present moment. Holding that the definition clause must be read in the context of the subject matter and the scene of the Act and consistent with the objects and other provisions of the Act, it was noted that Section 26 of the Act refers to legal proceedings before other Courts before or after the commencement of the Act, which will not be so, if the Act is prospective in nature. Unambiguously noting that if the remedies provided under Sections 18 to 22 of the Act are applicable prospectively to acts or omissions of domestic violence that occurred prior to 26-10-2006, then the aggrieved person who suffered violence prior to that date would be deprived of claiming any relief under the Act, the learned Judge found no justification or reason to deny certain remedies available to women who suffered domestic violence prior to 26-10-2006 as such a narrow interpretation will defeat the object and purpose of enacting the Act. As the Act is no criminal law with any direct penal consequences, the learned Judge concluded that acts of violence that occurred prior to 25-10-2006 would come within the meaning of domestic violence as defined under the Act and hence, the Act is retrospective in operation.

25. Grasim Industries Ltd. v. Collector of Customs, Bombay (2002) 4 SCC 297)1aid down that in matters of interpretation, every provision and every word must be looked at generally and in the context in which it is used and not in isolation whenever the language is clear, the intention of the Legislature is to be gathered from the language used. In GarikapatiVeeraya v. N. Subbaiah Choudhry <AIR 1957 SC 540 (1), a five Judge Bench of the Supreme Court laid down the golden rule of construction that in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be construed also to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed. Herein it has to be noted that the Act itself showed from the various provisions the retrospectivity or retroactivity of its operation to the consequences of acts or omissions that took place prior to the Act coming into force, which amount to an act of domestic violence as governed by the Act. Similarly in BanwariDass v. Summer Chand (AIR 1974 SC 1032), the words 'have been' have been interpreted as immediately prior to a

specific time. The justifiable period which can be considered to be immediately prior to the specific time under the Act, will be essentially one depending on the facts and circumstances of each case and the same cannot be defined with mathematical precision for universal application without any elasticity in matters governing basic human relations, more particular1y matrimonial and family relations. It is true that in Secretary, Regional Transport Authority v. D.P. Sharma (AIR 1989 SC 509), the words ‘has been’ were interpreted stating that whether the expression ‘has been’ occurring in a provision of a statute denotes a transaction prior to the enactment of the statute in question or a transaction after the coming into force of the statute will depend upon the intention of the Legislature to be gathered from the provision, in which the said expression occurs or from the other provisions of the statute. In P. Jeevan v. Chief Secretary to Government of A.P. (1997 (1) ALD 73), the phrase ‘has been’ received consideration, but the question was not probed fully on the facts and circumstances of the case. In MohitYadam v. State of Andhra Pradesh (15 supra) every relevant provision of the Act was analysed to understand the import of the words ‘has been’ used in relation to living in domestic relationship.

26. Mohit Yadam v. State of Andhra Pradesh (15 supra) continues to hold the field and if the Act is retrospective in operation, the domestic violence case cannot fail on the ground of the sequence of events involved herein being prior to the Act coming into force, while the question whether such events amounted to domestic violence and were probablised to have so happened is a question to be gone into on merits and decided by the trial Court and not herein.

27. Then comes the question as to the need for the aggrieved person being a wife by the time of initiating and prosecuting the domestic violence case. The petitioners referred to the passage on Domestic Violence from Halsbury’s laws stating the prov1s1ons relating to matrimonial injunctions in a County Court to be applicable to a man and a woman who are living with each other in the same household as husband and wife. SivakamiAmmal v. Bangaruswami Reddi (AIR 1954 Madras 1039) interpreting the word ‘wife’ with reference to the Madras Hindu Bigamy Prevention and Divorce Act, 1949 was also referred to, wherein the word ‘wife’ was held to mean a person who would have been a wife but for the decree of divorce or dissolution passed in the trial Court. The decision of the Apex Court in ChandDhawan v. Jawaharlal Dhawan (1993) 3 Supreme Court Cases 406)was also relied on, wherein after an exhaustive reference to the case law, the Apex Court was primarily looking at the words ‘at the time of passing any decree’ or ‘at any time subsequent thereto’ used in Section 25 of the Hindu Marriage Act, 1956 vis-a-vis the request for permanent alimony or maintenance. S.R. Batra v. Taruna Batra (5 supra) was also again referred to about ‘living at any stage in a domestic relationship’.

28. The decision by a learned Single Judge of this Court in A. Sreenivasa Rao v. State of Andhra Pradesh (2011 (2) ALD (Crl.) 191 (AP)also needs to be referred to, in which it was opined that when there was no jural relationship of man and wife between the 1st petitioner and 2nd respondent therein by the date of filing of D.V.A. No.18 of 2007, the case in D.V.A. No.18 of 2007, prima facie, is not maintainable. It was also noted that the dates when the alleged violations under the Act have occurred, were also not stated, due to which the 2nd respondent therein was not entitled to proceed against the petitioners therein under the provisions of the Act.

29. With great respect, the principle laid down in MohitYadam v. State of Andhra Pradesh

(15 supra) did not appear to have been placed before His Lordship and the elaborate reasoning given in MohitYadam v. State of Andhra Pradesh clearlyshowed the existence of any jural relationship of a man and wife between the aggrieved person and the respondent by the date of filing of the domestic violence case, is not a sine qua non for the maintainability of the domestic violence case nor is it necessary that the acts of domestic violence need to happen only after the Act came into force. The decision in A. Sreenivasa Rao v. State of Andhra Pradesh (23 supra) appeared to have mainly revolved round the facts in issue therein and no principle of law appears to have been laid down to be considered as a precedent. Hence, followingMohit Yadam v. State of Andhra Pradesh (15 supra), in which the question was discussed from every conceivable angle with which reasoning I am in total respectful agreement, the fact that divorce was granted by a foreign Court between Saritha and the 1st petitioner, will have no effect on the maintainability of the domestic violence case, if the allegations made therein otherwise bring the dispute within the province of the Act, the entitlement to the reliefs claimed being, of course, dependent on the ultimate proof of such allegations.

30. That such an understanding and interpretation is to be adopted, is also clear from the view taken by another learned Judge of this Court in SikakolluChandra Mohan v. Sikakollu Saraswathi Devi (2010 (2) ALD (Crl.) 391 (AP), wherein separation between the parties was prior to the Act, but it was seen whether the cause of action arose or cause of action continued to exist even after the Act coming into force. The learned Judge observed that even though separation between the parties was prior to the Act coming into force, still economic abuse by way of deprivation of the aggrieved person of right to residence and right to maintenance etc., would continue both before and after the Act coming into force and hence, it cannot be said that the mother has no cause of action to maintain the domestic violence case after the Act coming into force.

31. In fact in D. Velusamy v. D. Patchaiammal (2010 (4) Kerala Law Times 384), the Supreme Court examined the provisions of the Act and noted that the expression 'domestic relationship' includes not only the relationship of marriage but also a relationship 'in the nature of marriage' to be akin to common law marriage and directed the Family Court to decide whether the man and woman had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. The Supreme Court specifically noted the term 'wife' to be including, under Section 125 of the Code of Criminal Procedure, a woman who has been divorced by a husband or who has obtained a divorce from her husband and has not remarried. A woman not having the legal status of a wife was noted to have been, thus, brought within the inclusive definition of the term 'wife' consistent with the objective. The principles laid down by the Apex Court also may be in tune with the understanding of the word 'wife' as inclusive of a woman who has been a wife.

32. The manner in which the application under Section 12 of the Act had been presented direct by Saritha to the Magistrate was also attempted to be interpreted as fatal to the maintainability of the domestic violence case and the decision in M. Palani v. Meenakshi (AIR 2008 Madras 162)was relied on. The learned Judge incidentally also held that Section 2(q) does not say that the aggrieved person and the respondent should have lived together for a particular period and referred to the definition of 'domestic relationship' between two persons as one who live or have at any point of time lived together. That apart, the learned Judge held that before passing an order

by the Magistrate, he shall take into consideration the domestic incident report received from the protection officer. The learned Judge observed that a conjoint reading of both Sections 12 and 26 will make it clear that when a Magistrate passes an order, he shall receive the report from the protection officer. However, it has to be noted that the issue before His Lordship was more about the necessity for a family Court or a civil Court to have and consider a report from the protection officer before passing an order. It is seen from Milan Kumar Singh v. State of U.P. (2007 Cri.L.J. 4742)that a plain reading of section 10 was held to show that the aggrieved person can file a complaint directly to the Magistrate concerned. The learned Judge pointed out that the word ‘or’ used in Section 12 of the Act is very material, which provides choice to the aggrieved person to approach and there is no illegality in directly approaching the Magistrate for taking cognizance in the matter. It is for the Magistrate concerned to take the help of the protection officer or service provider after receiving the complaint, provided he feels it necessary for final disposal of the dispute between the parties. Only if the parties concerned or the Magistrate take the help of the protection officer, he will submit a domestic incident report to the Magistrate concerned. This view is in perfect tune with the language of the statute and object and purpose of the Legislation. Therefore, the domestic violence case cannot fail merely on the ground of the 2nd respondent directly approaching the Magistrate with her application.

33. Satyav. Teja Singh <AIR 1975 SC 105), RameshVenkat Perumal v. State of A.P. (1998 (1) ALD (Crl.) 122 (AP), the decision of Madras High Court, dated 02-04-2008 in Criminal O.P. No.7156 of 2007 and a hard copy relating to the Act from internet relied on by Sri Krishna Reddy, hence, need no further reference being more about the legal consequences on the status of the parties due to a foreign judgment and the applicability of the Act to past events with present consequences.

34. Viswanathanv. Rukn-ui-Mulk Syed Abdul Wajid (AIR 1963 SC 1)is also about the conclusiveness or effect of a foreign judgment.

35. Concerning prosecution of parallel proceedings simultaneously on the same cause of action, in M. Nirmala v. Dr. Gandla Balakotaiah (2008(2) ALT 241), the question was the entitlement to interim relief in a suit pending before a family Court with reference to Section 19 of the Act and the learned Judge pointed out that the law provided different fora for different remedies. Likewise in Lalmuni Devi v. State of Bihar (2001 (1) ALT (Crl.) 219 (SC), the Apex Court held that mere maintainability of a civil claim does not mean that a criminal complaint cannot be maintained and has to be quashed.

36. The question of multiplicity of proceedings arising out of the same set of facts was considered in depth in Kothamasu Nagavenkata Suresh Babu v. Kothamasu Suneetha (2009 (3) ALT (Crl.) 242 (A.P.)and it was held that-

“The very nature of such rights, liabilities and proceedings arising out of relationships in matrimony, blood and adoption as illuminated by the legislative scheme, policy, purpose and object, obligates the Court to adopt an interpretation permitting the pursuit of various alternative remedies simultaneously or successively with the only duty for the respective Courts being to note the scope, content and nature of the other proceedings and to mould the grant of respective reliefs with reference to the reliefs granted in such other proceedings or the change of circumstances brought about on the reliefs granted or the subsequent grant of reliefs in the other proceedings.

Hence, in respect of such rights and liabilities, the filing, pendency and pursuit of the proceedings under a different provision under a different law are not per se a disabling factor against the prosecution of the proceedings under another provision under another law simultaneously or successively."

It was also held that the impact of finality of an earlier adjudication of the same issues on the legality and sustainability of such subsequent proceedings may make them amount to an abuse of the process of the Court and interference with such proceedings to secure ends of justice will be on an altogether different legal premise, but not on the mere inconvenience of multiplicity of proceedings with the same factual background, if they are otherwise permissible in law. Such situation did not arise in this case and the maintainability of both the domestic violence case and the criminal case simultaneously, therefore, cannot be in question. In fact, the learned Judge in A. Sreenivasa Rao v. State of Andhra Pradesh (23 supra) was dealing with a domestic violence case and a criminal case simultaneously being pursued and held that the domestic violence case cannot be considered to be a criminal proceeding and the mischief of Article 20 Clause (2) of the Constitution of India or Section 300 of the Code of Criminal Procedure is not applicable in such an event.

37. Sri T. Pradyumna Kumar Reddy, learned counsel for the petitioners in Criminal Petition No.7063 of 2008 relied on Kans Raj v. State of Punjab (,AIR 2000 sc 2324). The Apex Court noted therein that for the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. The Apex Court noted that a tendency has developed for roping in all relations of the in-laws of the wives, which will ultimately weaken the case of the prosecution even against the real accused. In SushiiKumar Sharma (2005 AIR SCW 3569)also, the Apex Court administered a note of caution about the complaints, which are not bona fide and have been filed with oblique motives and directed the Courts to take care of the situation within the existing framework to avoid a new legal terrorism. The Supreme Court cautioned against following any strait jacket formula or casual dealing with such allegations and the ultimate objective of the legal system should not be lost sight of. Similarly in NeeraSingh v. State I (2007) DMC 545)also, it was noted that exorbitant claims are being made about the amounts spent on marriage, other ceremonies, dowry and gifts due to which the Court should insist on disclosing the source of such funds. It was also stated that vague allegations against every member of the family of the husband cannot be accepted at face value and the allegations have to be scrutinized carefully by the Court before framing the charge. The principles laid down in the three decisions relied on by Sri T. Pradyumna Kumar Reddy should put the trial Court on guard to appreciate the allegations made against the petitioners with reference to such factors, but no deep probe into the acceptability and reliability of the allegations can be indulged herein, more so, in the absence of any clinching proof either way on the material placed before the Court herein. Refraining from expressing any opinion on merits of the rival contentions, the matter has to be, therefore, left to be decided by the trial Court.

38. Sri Sharad Sanghi, learned counsel for the petitioners in Criminal Petition No.2539 of 2009 also referred toT. Venkateshwarlu v. State of A.P. (1998(5) ALD 426)with reference to the question of jurisdiction. In that case, a decree of divorce was granted in Sweden and the offence of bigamy was alleged to have been committed at Nellore in Andhra Pradesh. The cruelty under Section 498A of the Indian Penal Code was also not alleged to be at Hyderabad, but was alleged to be at Nellore and Sweden.

Consequently, it was held that the Courts or police at Hyderabad have no jurisdiction to investigate or enquire into the alleged offences. While the question whether the acts alleged against the petitioners amounted to cruelty within the meaning of Section 498A of the Indian Penal Code is one of fact to be probed into by the trial Court, the complaint by Krishna Reddy, the father of the alleged victim set the criminal law in motion and even if the alleged offence was mostly committed outside India within the meaning of Section 188 of the Code of Criminal Procedure, on the allegations made, certain events were claimed to have taken place at Hyderabad through telephonic conversations between the petitioners and Krishna Reddy, through personal meetings between Krishna Reddy and the 1st and 2nd petitioners, through a memorandum of understanding, dated 11-05-2007 at Hyderabad, e-mails received at Hyderabad and withdrawal of Rs.8,00,000/- within the jurisdiction of the Courts at Hyderabad. Whether a part of the cause of action for prosecuting the petitioners for the offences or domestic violence alleged arose at Hyderabad or not will be a matter of conclusion at the trial and not before hand and hence, the application of Section 179 or Section 188 of the Code of Criminal Procedure, 1973 and any consequential requirement of complying with any procedural safeguards will depend upon the factual conclusions that will be arrived at during trial.

39. Thus, neither the domestic violence case nor the criminal case appear to be susceptible to being quashed in exercise of the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, which is a rarely exceptional remedy and without expressing any opinion on the merits of the rival contentions, the criminal petitions have to be negatived.

40. In the light of the above discussion, the question of non-maintainability of the criminal petition for quashing the criminal case due to non-impleadment of Sri P. Krishna Reddy, the father of the victim, who gave complaint to the police, needs no further probe.

41. It should also be made clear that none of the observations made herein shall influence the consideration of the domestic violence case or the criminal case on their own merits by the trial Court and the entire discussion herein is purely with reference to examining the sustainability of the request for quashing the proceedings in both the cases.

42. Accordingly, both the criminal petitions are dismissed.

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[2012] 190 DLT 647/ [2012] 0 Supreme(Del) 35289

High Court of Delhi

S. RAVINDRA BHAT & S.P. GARG Shambhu Prasad Singh
Versus
Manjari

CRL.M.C. 3083 OF 2011 & CRL.M.A. 10914 OF 2011
Decided on: 17-05-2012

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT : S.12

Judgment:

RAVINDRA BHAT,J.

1. This judgment answers a reference to this Division Bench, requ1nng resolution of a conflict between the decision of two learned Single Judges of this Court on the question whether a magistrate can act straightaway on a complaint made by an aggrieved person, under the Protection of Woman from Domestic Violence Act, 2005 (hereafter "the Act). A learned Single Judge had considered and ruled upon the scope and effect of different provisions in an earlier decision of this court. Another learned Single Judge by order dated 03.05.2012 referred the present matter to the Chief Justice for being placed before a Division Bench for consideration. In these circumstances, the reference was assigned to this Court for its opinion. The precise question which this Court is called upon to answer is whether calling for and considering the report of the Protection Officer under the Act is mandatory before the Court can issue notice to a Respondent in an application under Section 12 of the Act.

2. The issue arose in this case, before the learned single judge in the context of a challenge from the order dated 31st May, 2011 passed by the learned Metropolitan Magistrate in complaint case No. 934/2003 titled as Manjari Vs. Shambhu Prasad Singh. The magistrate (hereafter called nTrial Court") issued notice to the Petitioner on a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (in short •D.v. Acf') without calling for a report from the Protection Officer; the Petitioner's challenge to that order was rejected by a the Learned Additional Sessions Judge on 4th August, 2011 dismissing the appeal filed by the Petitioner. No discussion of the factual matrix of the case is required since it is only the question of law which has to be decided by this court.

3. Learned counsel for the petitioner contends that on an application u/s 12 of the D.V. Act, no notice can be issued to the respondent without calling for and considering the domestic incident report (DIR) from the Protection Officer. It is contended that the ruling in Bhupender Singh Mehra & Anr. Vs. State of NCT of Delhi & Anr. 2010 (4) JCC 2939 has spelt out that such a procedure bind the magistrate. The relevant portion of the said judgment is reproduced hereunder:

   "Domestic Violence Act provides for obtaining domestic incident report. The domestic incident report proforma is given in form 1 of the schedule 2 of the Domestic Violence Rules. This proforma is in detailed analytical form where the details of each incident of domestic violence are to be entered with date, time and place of violence and person who caused domestic violence. The purpose is that all allegations made in

application must be specific and the Court should not exercise jurisdiction without considering domestic incident report since it is necessary for the Court to know before issuing any notice to respondent as to who was the respondent who caused domestic violence and what was the nature of violence and when it was committed."

4. Counsel for the Petitioner relies on the Proviso to section 12 of the D.V. Act. He cited two judgments of the Madras High Court viz. Uma Narayan v. Mrs Priya Krishna Prasad (Criminal Originial Petition No 9277 of 2008 decided on 01.08.2008) and Murugan v. Kasimani (Cri.R.C. (MD) No. 1133 of 2008 decided on 19.08.2010). Reference was also made to Rules 4, 5, 6, 8 and 9 of the Protection of Women from Domestic Violence Rules, 2006 (in short "the Rules").

5. On the other hand, counsel for the respondent contended that under Section 12 of the D.V. Act, the complainant herself has the right to apply to the Magistrate. Furthermore, reliance is placed on Section 23 which permits passing of ex-parte orders on the basis of an affidavit of the aggrieved person. It was urged that if legislative intent was that the magistrate should first issue notice to the Protection Officer, and then after securing the report of that officer, proceed to issue notice, the Act would have been more forthright. It was argued that if the court were to uphold the decision of the learned Single judge in Bhupender Singh Mehra, vital provisions of the Act, such as Section 23 which enables the court to make ex-parte orders, would be rendered infructuous and a dead letter. It was emphasized that in the absence of a clear intendment, through express provision, the Court should not fetter its discretion, as would inevitably happen, if the rule in Bhupender Singh Mehra were to be followed. Counsel emphasized that the object of the enactment was to provide speedy remedy to the victim of domestic violence, which included protection orders. If the magistrate were to be constrained from issuing orders, that are plainly permissible under the Act, on the basis of prima facie appreciation of evidence, the remedy would be defeated, and the victim would be subjected to further domestic violence either in the form of deprivation of a home, or subjected to physical cruelty, or even deprived economic benefits, which rightfully belong to her, as per definition of "domestic violence . The Court should therefore avoid such an interpretation, and adopt one which is in harmony with the express provisions, and furthers the intent of the enactment.

6. The respondent distinguished the ruling in Bhupender Singh Mehra from the present case. It was contended that in the said case the DIR was necessary in order to determine whether the respondent and the complainant were in a domestic relationship. In that case, the father-in-law and two brothers-in-law were arrayed as respondents giving a common address, and therefore, the observations in the said judgment were purely contextual to the facts. Here, however, only the husband was arrayed as respondent. Thus, the respondent contends that the ruling in Bhupender Singh Mehra does not assist the case of the petitioners.

7. Learned counsel for the Respondent has placed reliance on the decisions reported as Ajay Kant & Ors. v. Alka Sharma 2008 CrW 264 (MP HC) Rakesh Sachdeva & Ors. V. State of Jharkhand & Anr 2011 CrW 158 (Jharkhand HC), Md. Basit v. State of Assam (CrRev. P. No 175/2011) decided by Guahati High Court on 9th June 2011.

8. This Court has carefully considered the arguments of both the parties. Before analysing the merits of the rival submissions, it is necessary to reproduce the relevant provisions of the D.V. Act and the Rules.

"Section 2

(a) "aggrieved person" means 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;

(f) "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 family;

(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 any relief under this 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.

(s) "shared household" means 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.

9. Duties and functions of Protection Officers.-(1) It shall be the duty of the Protection Officer- (b) to make a domestic incident report to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area;

"12. Application to Magistrate.- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

Section 17 - Right to reside in a shared household

(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the Right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.

Section 19 - Residence orders

(1) While disposing of an application under sub-section (1) of section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

(a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) directing the respondent to remove himself from the shared household;

(c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973(2 of 1974) and shall be dealt with accordingly.

(5) While passing an order under sub-section (1), sub-section (2) or subsection (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

23. Power to grant interim and ex parte orders.-(1) In any proceeding before him under this Act, the Magistrate may pass such interim order as he deems just and proper. (2) If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex parte order on the basis of the affidavit in such fonn, as may be prescribed, of the aggrieved person under section 18, section 19, section 20, section 21 or, as the case may be, section 22 against the respondent."

The relevant provisions from the D.V. Rules are extracted below:

"5. Domestic incident reports.- (1) Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Fonn 1 and submit the same to the Magistrate and forward copies thereof to the police officer in charge of the police station within the local limits of jurisdiction of which the domestic violence alleged to have beem committed has taken place and to the service providers in that area.

(2) Upon a request of any aggrieved person, a service provider may record a domestic incident report in Form I and forward a copy thereof to the Magistrate and the Protection Officer having jurisdiction in the area where the domestic violence is alleged to have taken place.

6. Applications to the Magistrate.- (1) Every application of the aggrieved person under section 12 shall be in fonn II or as nearly as possible thereto.

(2) An aggrieved person may seek the assistance of the Protection Officer in preparing her application under sub-rule (1) and forwarding the same to the concerned Magistrate.

16. Shelter to the aggrieved person.

(1) On a request being made by the aggrieved person, the Protection Officer or a service provider may make a request under section 6 to the person in charge of a shelter home in writing, clearly stating that the application is being made under section 6.

(2) When a Protection Officer makes a request referred to in sub-rule (1), it shall be accompanied by a copy of the domestic incident report registered, under section 9 or under section 10:

Provided that shelter home shall not refuse shelter to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to the making of request for shelter in the shelter home.

17. Medical Facility to the aggrieved person.- (1) The aggrieved person or the Protection Officer or the service provider may make a request under section 7 to a person in charge of a medical facility in writing, clearly stating that the application is being made under section 7.

(2) When a Protection Officer makes such a request, it shall be accompanied by a copy of the domestic incident report:

Provided that the medical facility shall not refuse medical assistance to an aggrieved person under the Act, for her not having lodged a domestic incident report, prior to making a request for medical assistance or examination to the medical facility."

9. The basic objective in enacting the Act is to secure various rights to a woman living in matrimony or in a relationship akin to matrimony, or any domestic relationship. Domestic violence, is, per se, not a criminal offence but is defined extensively and comprehensively to include various conditions. The woman exposed to such domestic violence is given the right to move to Court for any of the reliefs outlined in Section 12 through either a comprehensive proceeding, claiming maintenance, right to residence, compensation etc. or even move to Court seized of any other pending proceeding, such as divorce and maintenance etc. (Section

26). Section 17 has, for the first time, enacted a right to residence in favor of such women. The Act being a beneficial one, the Court should adopt a construction to its provisions which advances the parliamentary intention rather than confining it. If the latter course is adopted the result would be to defeat the object of the law. As noticed earlier, domestic violence is per se not an offence but its incidence or occurrence enables a woman to approach the Court for more than one relief. The Court is empowered to grant ex-parte relief and ensure its compliance, including by directing the police authorities to implement the order, particularly those relating to residence etc. If such an order is violated by the respondent (a term defined in the widest possible terms, to include female relatives of the husband or the male partner etc), such action would constitute a punishable offence, which can be tried in a summary manner under Section 31 of the Act.

10. In Ajay Kant (supra) the Madhya Pradesh High Court held, turning down a contention identical to that of the respondent (in this case) that:

"On perusal of the aforementioned proviso appended to the prov1s1on, it appears that before passing any order on the application, it is obligatory on a Magistrate to take into consideration any report received by him from the Protection Officer or the service provider. Neither it is obligatory for a Magistrate to call such report nor it is necessary that before issuance of notice to the petitioners it was obligatory for a Magistrate to consider the report. The words before passing any order provide that any final order on the application and not merely issuance of notice to the respondent/the petitioners herein. The words any report also mention that a report, if any, received by a Magistrate shall be considered. Thus, at this stage if the report has not been called or has not been considered, it cannot be a ground or quashing the proceeding."

A similar view was taken by the Jharkhand High Court in Rakesh Sachdeva (supra):

"12. It would thus appear that the proviso to Section 12 would impose that before passing any order on an application of the aggrieved person, the Magistrate shall take

into consideration any domestic incident report received by him from the Protection Officer. The order contemplated in the proviso relates to the final orders, which the Magistrate, may pass under Section 18 of the Act. The Protection orders, which the Magistrate may pass under Section 18 of the Act, is only on being prima facie satisfied that the domestic violence has taken place or is likely to take place. The insistence to take into consideration the domestic incident report of the Protection Officer would therefore, not apply at the stage of initiation of the enquiry under Section 12 of the Act. The contention of the petitioners that without considering the domestic incident report, the very initiation of the enquiry is bad, appears to be misconceived and therefore, not tenable."

11. After examining both the views, the Guwahati High Court in Md. Basil (supra) expressed a slightly different view:

"10. I partly agree and partly disagree with the views taken by the Hon'ble Madhya Pradesh High Court and Jharkhand High Court. In my considered opinion, Section 12 does not deal with passing of final orders. Final orders are passed under Sections 18,19, 20, 21 and 22 of the Act only. Sec. 12 is akin to Sec 200 of the Criminal Procedure Code, 1973. Section 12 only contemplates as to who can file a complaint, what reliefs can be sought for, what should be the contents of the complaint and how the complaint can be examined thereafter. If these preconditions are satisfied the court can take cognizance of the complaint, subject to making out a prima facie case on facts. Unlike Sec. 200 CrPC there is no requirement of recording preliminary statement of the aggrieved person, filing a complaint under Sec. 12 of the DV Act, for the purpose of taking cognizance thereof.

11. Under Section 12(1) of the DV Act, an application/complainant can be filed before a Magistrate either by an aggrieved person or by a Protection Officer or any other person on behalf of the aggrieved person. In this way, Section 12(1) does not contemplate that such an application should invariably be accompanied by a report from a Protection Officer. Proviso to Section 12(1) is in the nature of a rider, which mandates that the Magistrate shall consider any domestic incident report, if received by him either from a Protection Officer or Service Provider. I have already mentioned earlier that an application under Section 12 can be independently filed by an aggrieved person, which may not be accompanied by any report from a Protection Officer. However, if any report from a Protection Officer is available before the Magistrate that shall have to be taken into consideration, but, the law does not impose a precondition for the Magistrate to call for a report from the Protection Officer. On this point I differ with the view taken by Hon'ble M.P. High Court, wherein it has been held that it is not obligatory for the Magistrate to consider the report. With the same analogy, I also differ with the view taken by the Hon'ble Jharkhand High Court wherein, it has been held that the insistence to take into consideration the domestic incident report of the Protection Officer would therefore, not apply at the stage of initiation of the enquiry under Section 12 of the Acf'.

12. For aforesaid reasoning, I approve the view taken by the learned Sessions Judge that it is not obligatory for a Magistrate either to call for a report from a Protection Officer or a Service Provider at the stage of taking cognizance of the complaint. However, if any such report is available before the Magistrate, the same should be taken into consideration."

12. This court notices that Section 23 empowers the Magistrate to pass such ex-parte interim orders as he may deem just and proper, based only on the affidavit of the aggrieved person. Nowhere does this provision express or imply by necessary intendment that the consideration of the DIR is obligatory. Since an ex-parte interim order may be granted immediately upon institution of the complaint, it is likely that the Protection officer's DIR may not be prepared by then. Thus, the Magistrate is definitely empowered to exercise this power, and pass interim order(s) against the concerned respondent. If this can be done without considering the DIR, then certainly notice to the respondent must also be allowed to be served without first considering the DIR.

13. It is noteworthy that Section 12(1) does not mandate that an application seeking relief under the Act be accompanied with the DIR or even that it should be moved by a Protection officer. Even Rule 6 which stipulates the form and manner of making an application to the Magistrate does not require that the DIR must accompany an application for relief made under Section 12. It is only the proviso to section 12(1) which mandates that the Magistrate shall consider the DIR "received by him from the Protection Officer or the service provider". No obligation to call for the DIR has been imposed upon the Magistrate. The plenitude of the power under Section 12, to pass appropriate orders, upon the application by •an aggrieved person" i.e. the victim of domestic violence is thus emphasized. A unique feature which the Court has to keep in mind is that the opening phrase in Section 12 are wide ("An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act..." If Parliament had intended that a report of the Protection Officer is a pre-condition for the magistrate to act upon the complaint of an aggrieved person, or someone acting on her behalf, it would have expressed that intention more clearly. The Court instead, is circuitously asked to interpret that provision, in the light of a Proviso, which is contextual, rather than compulsive. In this context, it was held by the Supreme Court, in Tribhovandas Haribhai Tamboli vs Gujarat Revenue Tribunal And Ors:AIR 1991 SC 1538 that:

"It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the filed, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, it to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and it the language of the main enactment is clear, the proviso cannot be tom apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect."

This rule of interpretation was again applied in Romesh Kumar Sharma Versus Union of India 2006 (6) SCC 512, where it was held that:

''The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. As was stated in Mullins v. Treasurer of Survey [1880 (5) QBD 170, (referred to in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha (AIR 1961 sc 1596) and Calcutta Tramways Co. Ltd. v. Corporation of Calcutta (AIR 1965 sc 1728); when one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject matter of the proviso. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case:

14. The proviso to Section 12 obliges the court to, "before passing any order on such application.....take into consideration any domestic incident report received by him from the Protection Officer or the service provider." The plenitude of the jurisdiction conferred by Section 12 is in no way affected by the proviso; all that it mandates is that before any order is made on an application (under Section 12) the magistrate Mshall" take into consideration "any'' report made by the Protection Officer. It is one thing to say that Parliamentary mandate to the court is to take into consideration, in every case, a protection Officers' report, as a precondition for exercise of jurisdiction - as the petitioner contends- and entirely another to say that if "any" such report is available, it shall be considered. This clear cut difference, in our opinion was lost sight of by the Single Judge in Bhupender Singh Mehra's case. If Parliament had indeed mandated that in every case the Court was obliged to call for a Protection Officer's report, and thereafter proceed with the complaint, the structure of Section 12 would have been entirely different. Such intention would have been expressed in more definitive, or imperative terms. In this context, this Court is also unpersuaded by the Petitioner's argument that Rule 6 and the form appended to the Rules have to be read into Section 12, to discern the precondition urged. This Court sees no need to do so; it would result in artificially curtailing what is otherwise a wide power.

15. In this context, this Court notices that the difference in the reasoning of the Jharkhand and M.P. High Court, on one hand, and the Guwahati High Court, on the other, is that while the former two held that the orders referred in the proviso to Section 12(1) refer to only the final orders that may be passed under Sections 19-22 of the Act, the latter view declines to hold so. The Guahati High Court, in addition, held that if the DIR is available, the same must be taken into consideration before passing an order. This Court agree with the reasoning of the Guwahati High Court. In the absence of any express or implied mention of any limitation as to the kinds of orders to which the Proviso to Section 12(1) would apply, it shall be equally applicable to interim orders as well as final orders. Thus, in all cases where the magistrate is in receipt of the DIR, he must take the same into consideration. This applies even at the stage of serving notice to the respondent. However, where the DIR has not been prepared, or has not been submitted to the Magistrate, he is under no obligation to call for the same for consideration as a precondition to exercising his power, and making such orders as the justice and the facts of the case may warrant.

16. The obligation to submit a DIR is imposed only upon the Protection Officers under Section 9 of the D.V. Act and upon the Service providers under Section 10

of the Act. The proviso to Rule 16(2) of the D.V. Rules, provides that the omission to file the DIR by the Protection Officer or the Service provider, as the case may be, therefore, does not deprive the aggrieved person from getting shelter at the shelter home. Similarly, the proviso to Rule 17(2) stipulates that medical assistance from the medical facility shall not be denied merely because the DIR has not been filed. These provisions - contemplated under the Rules imply that Parliamentary intent is not to make provision of relief under the Act subject to the filing of the DIR. The initiation of proceedings by serving a notice to the respondent can still be done, even if no DIR has yet been submitted to the Magistrate.

17. The other aspect is that the plenitude of Section 23 - which empowers the Court to make wide ranging ex-parte orders, and Section 25 (2) -which permits the Court to devise its own procedure, having regard to the exigencies of the case, are uniquely suited mechanisms intended by Parliament to empower the Court to take into consideration unique situations which might confront it, whenever relief is applied for by an aggrieved person, or on her behalf.

18. So far as the authorities cited by the petitioner, are concerned, the observation in Bhupinder Singh Mehra (supra) was made without properly analyzing the provisions of the Act and the Rules, and is as such incorrect. The said view is therefore overruled. Moreover, the facts of the case can be distinguished as firstly, therein the report had already been submitted, but was still not considered, and secondly, in that case there was doubt whether the named respondents were in a domestic relationship with the aggrieved person therein. The Uma Narayan case (supra) decided by the Madras High Court does not concern the issue at hand, and is not of any assistance to the petitioner. In Murugan (supra), the Madurai Bench of the Madras High Court observed as folloiNS:

"10. It is incumbent upon the trial Court to go through all the materials available before it and to come out with a considered opinion. Section 23 of the Act does not apply to the present case since the order challenged is not an interim order but it is a final order. A scheme has been formulated under Section 23 of the Act to provide interim relief to the aggrieved person. As far as Section 23 of the Act is concerned, it deals with the relief available to the aggrieved persons in other suits and legal proceedings. When the Judicial Magistrate Court is dealing with any application filed b the aggrieved persons under sections 12(1) of the Act, it shall necessarily follow and act in accordance with the Proviso viz., considering the Domestic Incident Report from the Protection Officer or the service provider and in default, any order passed by the Court would get vitiated."

The observations were in the context of the Magistrate appointing a Protection Officer, who duly filed a DIR. Thereafter the Magistrate passed his order without considering the same. In such circumstances, the case was remitted back with the direction that all materials available be considered. The import of the Madurai Bench of the Madras High Court decision does not extend beyond the true effect of Proviso to Section 12 (1) since the Court was only considering a case where the report was received by the Magistrate, but not considered. That decision does not help the case of the petitioner. The other provisions of the Act and the Rules referred to by the petitioner also offer no support to his case.

19. To conclude we answer the question referred to the Court in the negative; a Magistrate, when Petitioned under Section 12 (1) is not obliged to call for and

consider the DIR before issuing notice to the respondent. However, if the DIR has already been submitted, that should be considered, in view of the proviso to Section 12 (1).

20. In view of the fact that the Court has taken a view which results affirming the judgment of the Additional Sessions Judge as well as the concerned Metropolitan Magistrate (who had issued notice under Section 12 without calling for a report from the Protection Officer, and none was on the record) the petition is bereft of merit and it is therefore dismissed.

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COMPILATIONS OF CASE-LAWS ON THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005

I) Women as Respondents

1) Sandhya Manoj Wankhade and Ors v. Manoj Bhimrao Wankhade and ors, Supreme Court of India [MANU/SC/0081/2011]

II) Domestic Relationship:

A) Woman who has been in the past in the domestic relationship with the Respondent would be entitled to invoke the provisions of the PWDVA

1) Maroti s/o Dewaji Lande V. Sau Gangubai w/o Maroti Lande and Prashant s/o Maruti Lande, Bombay High Court [Criminal Writ petition No. 542/2010 , MANU/MH/1763/2011]

2) Karim Khan v. State of Maharashtra through PSO and Nahid Akhtar, Bombay High Court [MANU/MH/0990/2011]

B) PWDVA applicable to the Divorced women:

1) Bharti Naik V. Ravi Ramnath Harlarnkar and Anr , Bombay High court [III (2011) DMC 747 2010]

C) Relationship in the nature of marriage:

a. Women who are in relationship of cohabitation or live-in-relationshis:

1) D. Velusamy V. P. Tachaimmal, Supreme Court of India [MANU/SC/0872/2010]

2) Chanmuniya v. Chanmuniya Virendra Kumar Singh Kushwala and Anr., Supreme Court, [2011 (1) ALD (Cri) 370, MANU/SC/0807/2010]

b. PWDVA applicable to women in annulled marriage:

1) T.K. Surendran P. Najima Bindu & Ors, Kerala High Court, [MANU/KE/0682/2012]

c. Women in marriages which are void or voidable in law, where all other elements o marriage exists – Second wife have been held to be entitled to maintenance under section 18 of HAMA

1) Narinder Pal Kaur Chawla V. Manjeet Singh Chawla , Delhi High Court [AIR 2008 Delhi 7]

2) Suresh Khullar V. Vijay Kumar Khullar, Delhi High Court [AIR 2008 Delhi 1, MANU/DE/8505/2007]

3) Sau Manda R. Thaore, w/o Sh. Ramaji Ghanshyam Thaore v. Sh. Ramaji Ghanshyam Thaore, Bombay High Court [Criminal Revision Application No. 317/2006, MANU/MH/0427/2010]

III) Shared household:

1) V. D. Bhanot v. Savita Bhanot, Supreme Court in Special Leave Petition (Crl) No. 3916 of 2010.

2) SR Batra v. Taruna Batra, Supreme Court, [MANU/SC/007/2007]

IIIA) Right to reside in the shared household

A) Where the property is in the name of the husband and the in-laws, the wife has a right to reside

1) Jyotsana Sharda v. Gaurav Sharda, Delhi High Court [Criminal Revision petition No. 132 and 133/ 2009, MANU/DE/3520/2009]

B) Where the property was owned by the Husband but has subsequently been transferred in the name of the in-laws, with intention to deny the wife's rights, the women has a right to reside in the shared household.

1) P. Babu Venkatesh and Ors v. Rani, Madras High Court, [MANU/TN/0612/2008]

C) Where the husband has a right, title or inetrest in te property for the purpose of section 17 of PWDVA is shared household and hence the aggrieved person has a right to reside in the household

1) Rajkumar Rampal Pandey v. Sarita Rajkumar Pandey, Bombay High Court [MANU/MH/1295/2008]

D) Eveneet Singh v. Prashant Choudhury and Kavita Choudhury v. Eveneet Singh [MANU/DE/3497/2010]

IV) Residence Orders:

1) Vandana v. T. Srikanth Krishnamachari and Anr, Madras High Court [(2007) 6 MLJ 205 (Mad)

2) Ishpal Singh Kahai V. Mrs. Ramanjeet Kahai, Bombay High Court [MANU/MH/0385/2011]

3) YamaVs. Ankit Manubhai Patel, Gujarat High Court [MANU/GJ/0546/2014]

V) Monetray relief

A) Sukrit Verma and Anr v. State of Rajasthan, Rajasthan High Court (Jaipur Bench) [MANU/RH/0337/2011

Om Prakash v. State Rajasthan, Rajasthan High Court (Jaipur Bench) [MANU/RH/0324/2011]

B) Payment of maintenance

1) Rajesh Kurre V. Safurabai & others, Chattisgarh High Court at Bilaspur in Criminal Misc Petition No. 274 of 2008

C) Quantum of maintenance

1) Jasbir Kaur Sehgal v Dist. Judge Dehradun [(1997) 7 SCC 7, MANU/SC/0835/1997]

D) Maintenance can be granted irrespective of whether she has separate income of her own or not.

1) Anup Avinash Varadpande v. Anusha Anup Varadpande, Bombay High Court, [MANU/MH/0042/2010]

E) Maintenance can be granted irrespective of whether the aggrieved person is currently living with the husband or not.

1) Om Prakash v. State of Rajasthan & Anr [MANU/RH/0324/2011]

VI) Domestic Incident report is not mandatory:

1) Shambhu Prasad Singh v. Manjari, Delhi High Court [MANU/DE/0899/2012]
2) Nand Kishor v. Kavita and Anr, [MANU/MH/0957/2009]

VII) Application under PWDVA

1) Milan Kumar Singh & Anr V State of Uttar Pradesh,2007 Cri LJ 4742 [MANU/UP/0827/2007]

VIII) Ex-parte ad interim orders:

A) Ex-parte ad interim orders on the basis of affidavit

   1) Preceline George @ Antony Preceline v. State of Kerala & ors Kerala High Court at Ernakulum in WP (C) No. 30948 of 2009 (Q) .
   2) Sri Sujoy Kumar Sanyal V. Smt Shakuntala Sanyal (Haldar) and Anr. , Calcutta High Court , (MANU/WB/0597/2010)

IX) Direction to the Police to implement order

1) P. Babu Venkatesh and Ors V. Rani, Madras High Court, [MANU/TN/0612/2008]

X) Breach u/s 31 of PWDVA

Complaint u/s 31 shall be tried by same magistrate who passed the order:

1) Mrs. Pramodini Vijay Fernandes V. Vijay Fernandes, Bombay High Court, Writ Petition No. 5252 of 2009

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