

SUMMARY FOR THE **WORKSHOP** TO BE HELD ON
28-11-2015
ON

The Protection of Women from Domestic Violence Act.

*All over the world women victims
speak only one language and that is
language of silence...!!!*

Introduction:

It is a harsh reality that women have been ill-treated in every society for ages and India is no exception. The irony lies in fact that in our country where women are worshiped as shakti, the atrocities are committed against her in all sections of life. She is being looked down as commodity or as a slave, she is not only robbed of her dignity and pride outside her house but she also faces ill-treatment and other atrocities within the four walls of her house. Due to that women are the real downtrodden of the society. They are discriminated at two levels, firstly they suffer because of their gender and secondly due to grinding poverty.

The object of PWDV Act

It is not that to protect women from domestic violence, there was no law in India earlier dealing with violence against

women. The previous law, however, was not specific to domestic violence against women. Therefore, it was not very effective in controlling violence committed against women, within the family or inside the household. This law is enacted with a view to provide reliefs to a victim woman subjected to domestic violence when the provisions of civil law were falling short.

Thus the Protection Of Women From Domestic Violence Act, 2005 is enacted to provide for more effective protection of rights of women guaranteed under the **Constitution who are victims of violence occurs within family**. It is enacted to provide speedy remedies to women who are subjected to domestic violence. It is a gender specific enactment. It recognizes woman's right to reside in violence free environment, both in her parental & matrimonial home.

AGGRIEVED PERSON:

In view of 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.

DOMESTIC RELATIONSHIP:

In view of Section 2(f) of PWDV Act "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.

This Act recognizes relationship in the nature of marriage and also recognized relationship where there is no marriage between parties in the sense of solemnization of marriage. Where the parties have lived in a share household, though temporarily lived together, then the domestic relationship can be inferred.

In **M.Palani v Meennakshi** 2008(65)AIC686 Hon'ble Madras High Court held that "Provision does not say that for constitute domestic relationship, it is necessary that woman should live together for particular period."

In the case of **D. Veluswamy Vs. D. Patchaiammal - [(2010) 10 SCC 469]** : while dealing with the scope of the expression "domestic relationship" under the DV Act, the Hon'ble Apex Court considered the question as to what is the meaning of the expression "a relationship in the nature of marriage", which is not defined under the Act. The Hon'ble Apex Court held that to get the benefit of DV Act, **all** "live-in" relationships will not amount to a "relationship in the nature of marriage" . To get such benefit following conditions must 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.

e) They must have lived together in a 'shared household' as defined under section 2(s) of the Act.

Deepak Vs. The State of Maharashtra and other.

[MANU/MH/1726/2015]

In this case the core issue before court below was as to whether the applicant and respondent no. 2 had lived together for reasonably long period of time in a relationship which was in the nature of marriage. The point was answered in the affirmative. It is observed that Respondent no. 2 knew that applicant was a married person and he had children from his wife and that applicant has been staying with his wife. Despite that she had maintained relationship with the applicant said relationship cannot be relationship in the nature of marriage. Therefore, it cannot be said that Respondent no. 2 was aggrieved person within the meaning of section 2(a) of the Act. She was obviously therefore not entitled for any relief under The Protection of Women from

Domestic Violence Act, 2005.

RESPONDENT:

In view of Section 2(q) “respondent” means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act. In the case of **Sou. Sandhya Manoj Wankhede V/s Manoj Bhimrao Wankhede & Ors.** 2011 (2) AIR BOM R 295 (SUPREME COURT) the Hon'ble Apex Court held that, female relatives of husband also include as respondent.

In **Sandhya Wankhede v. Manoj Wankhede**, [2011 ALL M R (Cri.)975 (SC),] it is held that respondent includes female relatives of husband also. Same view was taken in **Jaydeep Singh v. State of Gujarat**, [2010 Cri.L.J. 2462] and also in **Archana Naik v. Urmilaben**, [2010 Cri.L.J. 751]. So aggrieved woman can file complaint against her mother-in-law or sister-in-law also under D.V. Act.

WHAT IS DOMESTIC VIOLENCE UNDER THIS ACT :

The expression “Domestic Violence” has been defined in see 3 of the Act. It is very comprehensive. It embraces wide range of wrongs. Roughly it includes physical injury, mental harm, sexual harassment, economic exploitation, emotional abuse and many acts of commissions and omissions rooted in gender

discrimination, inequality, subordination and injustice.

This Act elaborately describes following concepts

Physical abuse

Physical abuse is abuse involving contact intended to cause feelings of intimidation, pain, injury, or other physical suffering or bodily harm. Physical abuse includes hitting, slapping, punching, choking, pushing, and other types of contact that result in physical injury to the victim. Physical abuse can also include behaviors such as denying the victim of medical care when needed, depriving the victim of sleep or other functions necessary to live, or forcing the victim to engage in drug/alcohol use against her will. It also includes inflicting physical injury onto other targets, such as children or pets, in order to cause psychological harm to the victim.

Sexual abuse

Sexual abuse is common in abusive relationships. Any situation in which force is used to obtain participation in unwanted, unsafe, or degrading sexual activity constitutes sexual abuse. Forced sex, even by a spouse or intimate partner with whom consensual sex has occurred, is an act of aggression and violence.

Categories of sexual abuse include:

- Use of physical force to compel a person to engage in a sexual act against her will, whether the act is completed or not.
- Attempted or completed sex act involving a person who is unable to understand the nature or condition of the act, unable to decline participation, or unable to communicate unwillingness to engage in the sexual act, e.g. because of underage immaturity, illness, disability, or the influence of alcohol or other drugs, or because of intimidation or pressure.

Emotional abuse

Emotional abuse (also called psychological abuse or mental abuse) includes humiliating the victim privately or publicly, controlling what the victim can and cannot do, withholding information from the victim, deliberately doing something to make the victim feel diminished or embarrassed, isolating the victim from friends and family, implicitly blackmailing the victim by harming others when the victim expresses independence or happiness, or denying the victim access to money or other basic resources and necessities.

Emotional/verbal abuse is defined as any behavior that threatens, intimidates, undermines the victim's self-worth or self-esteem, or controls the victim's freedom. This includes

threatening the victim with injury or harm, telling the victim that they will be killed if they ever leave the relationship, and public humiliation. Constant criticism, name-calling, and making statements that damage the victim's self-esteem are also common forms of emotional abuse. Often perpetrators will use children to engage in emotional abuse by teaching them to harshly criticize the victim as well.

Emotional abuse includes conflicting actions or statements which are designed to confuse and create insecurity in the victim. These behaviors also lead the victim to question themselves, causing them to believe that they are making up the abuse or that the abuse is their fault.

Verbal abuse

Verbal abuse is a form of abusive behavior involving the use of language. It is a form of profanity that can occur with or without the use of expletives.

Abusers may ignore, ridicule, disrespect, and criticize others consistently; manipulate words; purposefully humiliate; falsely accuse; manipulate people to submit to undesirable behavior; make others feel unwanted and unloved; threaten economically; place the blame and cause of the abuse on others; isolate victims from support systems; harass; demonstrate behaviors, either in terms of sudden rages or behavioral changes, or where there is a

very different “face” shown to the outside world vs. with victim. While oral communication is the most common form of verbal abuse, it includes abusive words in written form.

Economic abuse

Economic abuse is when the abuser has control over the victim's money and other economic resources. In its extreme (and usual) form, this involves putting the victim on a strict “allowance” withholding money at will and forcing the victim to beg for the money until the abuser gives them some money. It is common for the victim to receive less money as the abuse continues. This also includes (but is not limited to) preventing the victim from finishing education or obtaining employment, or intentionally squandering or misusing communal resources.

The procedure for obtaining orders or reliefs

The procedure for obtaining orders or reliefs is provided under Sec. 12 of the Act. Under this Section effort has been made to simplify and make more effective method for filing a complaint of domestic violence and obtaining relief under it. It also simplifies the procedure for an aggrieved person that if she wishes to file complaint under this Act she can file it through any person or an N.G.O., who has witnessed a domestic violence.

In the case of **Chandrakant Wagh v. Manisha Wagh**, [2013 All M R (Cri) 4265], the Hon'ble High Court held that procedural technicalities ought not to come in way of granting relief and if application in Form -II not properly filed, it would not deter the Court from granting relief because aim of Act is to provide justice to woman and not to frustrate it.

Proceedings under the Act for reliefs

It may be initiated by an application addressed to the Magistrate. The application may be made by an aggrieved person, or Protection Officer or any person on behalf of the aggrieved person, seeking one or more reliefs. The Magistrate, within three days from the date of receipt of the application should fix the first date of hearing. Serving of the notice to the Respondent, that is, the person against whom allegation of domestic violence has been made. Hearing the parties and providing reasonable opportunity to both sides of being heard. Grant the relief, if and when the Magistrate is satisfied that a case of domestic violence, actual or threatened, has been made out. Counseling from and assistance of the welfare expert may be availed, if the Magistrate thinks it fit to do so. The proceedings may be held in camera (Sec.16).

In view of proviso of section 12 of the Act 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. However in the case of **Nanadkishor Vinchurkar--vs--Kavita Vinchurkar** 2009 ALL MR 2628 the Hon'ble High Court held that, it is not necessary at each and every case to obtain report of Protection Officer.

In the case of **Manoj Changanani -vs- Prema Changanani** 2012 (3)ALL M.R. (Crimes) 1201 the Hon'ble High Court held that, report of Protection officer is not mandatory in all cases u/s 12 of DV Act. The word 'shall' implied in section 12 of the DV Act cannot be allowed to defeat the scheme of the Act.

Relief under the PWPV Act

Protection orders

After giving an opportunity to the aggrieved person and respondent of being heard, the magistrate if satisfied that a prima facie case of domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person prohibiting the respondent from doing the following acts such as •
Committing any acts of domestic violence;

- Aiding or abetting in the act of domestic violence;
- Entering the place of employment of aggrieved person or if the person is child, its school or any other places;
- Attempting to communicate in any form including personal, oral

or written, electronic or telephonic contact;

- Alienating any assets, operating bank account, bank locker held or enjoyed by both parties jointly or singly by the respondent including her sthridhan;
 - Causing violence to the dependents, or other relative or any other person who give the assistance to the aggrieved person;
 - Committing any other acts specified by the protection officer
- (Sec 18)

Residence orders

The magistrate may after being satisfied that a domestic violence has taken place, pass residence order.

- Restraining the respondent from dispossessing or in any manner disturbing the peaceful possession of the shared household;
- Directing the respondent to remove himself from the shared household;
- Restraining to respondent or his relatives from entering any portion of the shared house hold where the aggrieved person lives;
- Restraining the respondent from alienating or disposing of the shared house hold or encumbering it;
- Restraining the respondent from renouncing his right in the shared household;
- Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her or to pay rent for the same if the circumstances so require. No order shall be made against women under this section. Magistrate may

impose additional condition and pass any other order to protect the safety of the aggrieved person or her child. Magistrate is also empowered to order direction the concerned station house officer of the police station to give protection to the aggrieved person to assist in implementing his order. Magistrate may also impose on the respondent to direct stridhan or any other property or valuable security she is entitled. (Sec. 19)

SHARED HOUSEHOLD :

One of the most important features of the Act is the woman's right to secure housing. The Act provides for the woman's right to reside in the matrimonial or shared household, whether or not she has any title or rights in the household. This right is secured by a residence order, which is passed by a court. These residence orders cannot be passed against anyone who is a woman. Any house can be treated as "share household" wherein the wife lived in a domestic relationship with husband. Moreover, any household over which husband in his capacity as a member of joint family has some subsisting right, even assuming he does not have any exclusive right, title or interest.

In the case of **Ajay Kumar Madanlal Bajla Vs. Neha Vishal Bajla & Ors** 2011 (3) AIR BOM R 79 the Hon'ble High Court held that, Wife showing that suit flat was her matrimonial home and husband had paid the EMIs of loan taken for purchase

of said flat. Payment of EMIs by husband showing that husband had some interest and ownership in suit flat. In such circumstances wife would be entitled to protect her possession. Grant of interim injunction against husband and father-in-law preventing them from dispossessing wife, proper.

In **S.R. Batra Vs. Smt. Tarun Batra** 2006(8) SCC1002 “Hon'ble Supreme Court held that “Shared household mean only the house belonging or taken on rent by husband or house which belongs to the joint family in which the husband is one of the member. It has also been observed therein that the property exclusively owned by the mother of husband cannot be called as shared household.”

Monetary relief

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

- Loss of earnings;
- Medical expenses;
- Loss caused due to destruction or removal or damage of any property;
- Magistrate may pass order as to maintenance for the aggrieved person as well as her children if any including the order under or in addition to an order of maintenance under section 125 criminal procedure code or any other law. The quantum of relief shall be

fair reasonable and consistent with the standard of living to which the aggrieved person is accustomed to. Magistrate can order a lump sum amount also. On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent. Magistrate can order a lump sum amount also. On failure of the respondent to make payment of this order, magistrate shall order employer or debtor of the respondent to directly pay to the aggrieved person or to deposit in the court a portion of the salary or wage due to the respondent. (Sec. 20)

Custody order (Section 21) :- Section 21 lays down that, notwithstanding anything contained in any other law for the time being in force the Magistrate may, at any stage of hearing of the application for grant of any relief, grant temporary custody of any child to the aggrieved person or to the person making an application on her behalf and specify the arrangements for visit of such child by the respondent. However, the Magistrate may refuse to allow such visits if in his opinion such visits may be harmful to the interests of the child.

Hon'ble Apex Court in **Nil Ratan Kundu and another Vs. Abhijit Kundu, reported in 2009(9) SCC 413**, Observed that, "In determining the question as to who should be given custody of minor child, the paramount consideration is the welfare of child and not rights of the parents".

In **Mausami Ganguli V/s. Jayant Ganguli, (2008) 7 SCC 673**, Hon'ble Supreme Court held that, "The idea of shared parenting is still new to Indian custody jurisprudence. While the old principle of the father as the natural guardian has been laid to rest, in its place the best interest of the child principle is applied to custody disputes".

Compensation Order (Section 22). In addition to other reliefs, as may be granted under this Act, the Magistrate is empowered under Section 22 on an application by the aggrieved person, to pass an order directing the respondent to pay compensation or damages or both to the aggrieved person for the injuries including for the mental torture and emotional distress caused to her by domestic violence by the respondent.

Interim Order

The Magistrate under Section 23 in any proceeding under this Act grant an interim order and also may pass an ex-parte order on the basis of affidavit given by the aggrieved person.

Nature of the reliefs under the Act:

It is civil in nature and not criminal. The object of Civil Justice is the enforcement of rights, while that of criminal justice is punishment of the offenders. The act offers remedy for the wrong of domestic violence, by providing easy access to justice

mechanism insisting on simplicity of procedures and urging upon expeditious hearing.

In **Dr. Vinod Prashar Vs. State of Uttar Pradesh** (2008 Cri.L.J. Page 837) “Hon'ble Apex Court held that “proceeding under this act is civil in nature and it is only for the purpose of cutting down the procedural delay, power is conferred on Judicial Magistrate.”

It is preponderance of probability and not proof beyond reasonable doubt. The standard of proof is the same as in civil cases. For passing protection orders, the Magistrate ought to be prima facie satisfied. Prima facie literally it means “on the face of it” or “at first sight”. In law, “prima facie evidence” is generally taken as equivalent to “sufficient evidence”. “Prima Facie Case” is a case established by sufficient evidence, which would stand out, if not rebutted by the evidence to the contrary.

Violation of protection order is an offence u/s 31(1).

It is cognizable and non bailable. The sole testimony of the aggrieved person, may be the basis for conviction of the accused, if not overthrown by the evidence to the contrary. Prosecution and punishment of the violator of the protection order is a coercive method of its enforcement. The protection order shall remain in force till it is complied with or the aggrieved person says that it is no longer required, that is, when she applies for discharge

vide (Sec.25). The Magistrate may direct the officer-in-charge of the Police Station concerned to assist in the implementation of the protection order.

In the case of **Sachin Suresh Bodhale V. Sushma Sachin Bodhale** 2015 (1) ABR (Cri.) 435 the Hon'ble High Court held that, the Magistrate, could not have issued nonbailable warrant directly. He should have followed the procedure laid down in subsection (3) of Section 125 and Section 421 of the Cr.P.C. Code of Criminal Procedure. In the scheme of Code of Criminal Procedure, in the first place, the Magistrate was under obligation to issue a warrant for levy of the amount by attachment and sale of any movable property. The other remedy available was to issue a warrant to the Collector of the district, authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both of the defaulter. The Magistrate could have sentenced the petitioner for the whole or any part of each month's allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which might extend to one month or until payment if sooner made. . As such the first option available to the Magistrate was to issue a warrant for levying fine. If whole of the amount was recovered by adopting the procedure under [Section 421](#) of the Code of Criminal Procedure, the question of putting the defaulter in prison did not arise. In case amount was not recovered or part

of it was recovered and part of it was not recovered, then the question would have arisen as to how much sentence should be imposed on the defaulter as per the provision laid down in [the Code](#) of Criminal Procedure. The stage of issuing warrant comes only after sentencing and not before that.

Jurisdiction

As per Sec. 27 the Magistrate, within the local limits of whose jurisdiction the aggrieved person permanently or temporarily resides or carries on business or is employed or the respondent resides or carries on business or is employed or the cause of action has arisen, shall be the competent Magistrate to grant protection orders and other orders and to try offences under the legislation. Sub-clause (2) provides that any order made under the legislation shall be enforceable throughout the India.

The breach of protection order or an interim protection order by the respondent should be an offence punishable with imprisonment of either description which may extend to one year or with fine which may extend to 20,000/- rupees or with both. It shall be tried as far as practicable by the Magistrate who passed an order under the Act. While framing the charge regarding breach of order he may also frame the charges under Sec. 498A or any other provisions of Indian Penal Code or the Dowry Prohibition Act in case the facts disclose the commission of any offence under those provisions. The breach of protection order

shall be cognizable and non bailable offence and the Court may conclude on the sole testimony of the aggrieved person that the offence has been committed.

COPIES ORDER: (Section 24)

In view of section 24 it is mandatory for the Magistrate to furnish the order copies to the parties as well as the office in-charge of the police station and service provider free of cost.

DURATION & ALTERATION OF ORDERS : (SECTION 25)

This section lays down that a protection order given under the legislation shall be in force till the aggrieved person applies for its discharge. In case there is a change in the circumstances of a case, the Magistrate may, on application made by the aggrieved person or the respondent pass an order altering, modifying or revoking any order made under the legislation.

OTHER SUITS & LEGAL PROCEEDINGS: (Section 26)

Provisions of this Act can also be invoked in any other proceedings which are pending in civil or criminal Courts, if the Court is competent to grant the relief so claimed and the reliefs claimed are in addition to the reliefs that the Court may grant in limitation between the same parties

APPEALS: (SECTION 29)

Under the Act, appeals are permitted for both applicant and

respondents. The forum for filing appeal against the Magistrate's orders is Sessions Court. **In Abhijit Bhisath Auti V/s State of Maharashtra reported in 2009 Cri.L.J. 889, it is held that, “As per Section 29, all orders under the Act are appealable, be they interim or final”.**

Conclusion:

Thus, in sum and substance it shall be endeavor of all of us to take this gender specific legislation to its logical end by implementing all its provisions in true spirit.