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**Sub : Criminal Law**

Protection of Women from Domestic  
Violence and concerned provisions  
under Code of Criminal Procedure.

“All over the worlds,  
women victims speak  
the same language of silence .....”

**INTRODUCTION :-**

“ यत्र नारयस्तु पूज्यन्ते, रमन्ते तत्र देवता ” By this shloka we introduce our culture to the world. We demonstrate that we believe where we respect the women Goddess.

(1) In today's world women are equally contributing socially and economically towards the progress of a country. Women constitute about one-half of the global population, but they are placed at various disadvantageous positions due to gender difference and bias. They have been the victims of violence and exploitation by the male dominated society all over the world. A domestic Violence against women is one of the social evil which exists in the society. Violence against the women has become a daily occurrence in the society. Facing violence within the closed doors of the house adversely affects the mental and physical health of the women, which in turn affects the progress of the nation.

(2) Domestic Violence is undoubtedly a human rights issue and serious deterrent to the development of any country. The Vienna Accord of 1994 and the Beijing Declaration and the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

(3) Our constitution and Preamble imbues the principal of social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and opportunity, assures dignity of the individual to all its citizens which also includes women. With a view to uphold these principles' and address the problem of Domestic Violence, The Protection of Women From Domestic Violence Act, 2005' was enacted in India.

(4) **SAILENT FEATURE OF THE ACT :-**

- (i) The Act covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity marriage or a relationship in the nature of marriage or adopting etc. Even sisters, widows, mothers, single woman or living with the abuser are entitled to get legal protection under the Act.
- (ii) The definition of domestic violence made comprehensive as it includes actual abuse or the threat or abuse or violence, physical, sexual, verbal, emotional and economic. Even harassment by way of unlawful dowry demands also covers under the definition.
- (iii) Right to resident of women is protected and this is most important feature of the Act. Women's right to reside in the matrimonial or shared household, whether or not

she has any title or rights in the household is provided under the Act.

- (iv) The Court is empowered to pass protection orders that prevent the abuser from aiding or committing an act of domestic violence or any those specified act.
- (v) There is provision of appointment of protection officers or NGOs to provide assistance to the women for medical examination, legal aid, safe shelter, etc.
- (vi) For effective implementation of provisions, the Act provided breach of protection order or interim protection order as a cognizable and non bailable offence punishable with imprisonment for a term which may extend to one year or with fine extending to twenty thousand rupees or with both.

**(5) The important terms which needs to be discussed before knowing definition of domestic violence are :-**

- (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.
- (b) "**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 joint family.

In Narayan Jangluji Thool and others Vs. Sou. Mala Manu/MH/0103/2015. It is held that, it is clear from the averments made in the application itself that the respondents has never claimed to be living together with the petitioner and has also not claimed that at any point of time before filing of the application, she had lived together with the petitioner. Living together with another person in a shared household is an essential ingredient of the domestic relationship as contemplated under Section 2(f) of the act, 2005.

That apart, the applicant should also have lived in a shared household with a man in a relationship which is akin to a marriage, if she is claiming herself to be wife or marriage partner. Then, if she is already a married woman, she cannot enter into domestic relationship with a man. It is an admitted position in the instant case that the respondent is a married woman, who has not obtained any legal divorce from her husband. Therefore, by accepting the case of the respondent as it is, I am of the view that the proceedings initiated under Section 12 of the Act, 2005 cannot be sustained in law.

(c) "**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.

**The Hon'ble Bombay High Court in Archana Hemant Naik V/s Urmila I. Naik and Another 2010 Cri.L.J. 751**  
 the provisions of Domestic Violence Act and held that, female relative of husband can be respondent only certain reliefs under section 19 of the Protection of Women From Domestic Violence Act cannot be granted against female relative.

**In D.Velusamy V.D. Patchaimammal Manu/SC/o872/2010,** the Hon'ble 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 favour of a valid wedlock.

(d) "***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 jointly family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person have any right, title or interest in the shared household.

The Hon'ble Supreme Court in the case of ***S.R. Batra and Another V/s Smt. Taruna Batra (2007) 3 SCC 169*** has held that not all the place where aggrieved person and her husband have resided can become " shared household". Only house owned by husband rented by husband or joint family house can become shared household.

The term domestic violence is defined in Section 3 of the said Act.

**(6) CONCEPT OF DOMESTIC VIOLENCE :-**

The expression " Domestic Violence" means any act, omission or commission or conduct of the respondent shall amount to domestic violence in certain circumstances. It includes causing physical abuse, sexual abuse, verbal and emotional or economic abuse which are also explained under the definition of domestic violence. In 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 a guiding factor. The Section 3 of the law says any

act/conduct/omission/commission that harms or injures or has the potential to harm or injure will be considered" domestic violence. The defination of domestic violence is constituted of following terms :-

**(A) Physical Abuse** is defined as any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health, or an act that impairs the health or development of the person aggrieved, or that includes assault, criminal intimidation and criminal force.

**(B) Sexual Abuse** is any conduct of a sexual nature that abuses, humiliates, degrades, or otherwise violates the dignity of the person. The law also covers instances where a woman is forced to have sexual intercourse with her husband against her will.

**(C) Verbal and Emotional Abuse** has been defined as any insult, ridicule, humiliation, name-calling and such acts. A woman who is insulted and ridiculed for, say, not being able to conceive, or for not having produced a male child, can now take recourse to this law. Any repeated threats to cause physical pain to any person in whom the person aggrieved is interested in other words, if any the abuser were to threaten the children, or relatives of the aggrieved party will also be covered under this heads.

**(D) Economic Abuse** is a very forward-thinking, important part of this definition. The deprivation of economic or financial resources to which the aggrieved woman or child is entitled under law or custom, or which the person aggrieved requires out of necessity, can be claimed under the provisions of this law withholding such resources now falls under the category of economic abuse.

(07) The responsibility of implementing this law has been casted upon Protection Officers, Service Providers, Police Officers and Magistrate (to be more specific Judicial Magistrate) The Protection Officers are the new Post created by this Act.

(08) The aggrieved person herself or some other person on her behalf or the protection officer can move an application under section 12 of this Act for seeking reliefs mentioned in sections 17,18,19,20,21 and 22 of the said Act. If the reliefs which can be granted under these provisions are scrutinized they appear to be in form of civil nature i.e. in form of injunction and prohibitory orders.

(09) The relief which can be granted under section 17 is the right to reside in the shared household. As per Section 18 the Protection order can be passed restraining respondent from committing any Domestic Violence against aggrieved persons. Section 19 of the Act provides for residence order. Section 20 speaks about mandatory relief which can be granted to the aggrieved persons which includes mandatory for herself and her children which can be in addition to the maintenance grant under section 125 of the Code of Criminal Procedure or any other law enforced. As per section 125 of the Code of Criminal Procedure or any other law enforced. As per section 21 the Magistrate can grant temporary custody of the children to the aggrieved person and section 22 speaks about grant of compensation.

(10) The Magistrate under section 23 of the Act is empowered to grant interim and ex-parte order granting relief under section 18,19,20 and 22 against the opponent.

The Hon'ble Bombay High Court in the case **Vishal Damodar Patil Vs. Vishakha Vishal Patil reported in 2008(6) A.I.R Bom.R. 297** held that " Even though there is no separate application filed for interim maintenance and Residence order, Magistrate can grant interim relief."

**(11) Reliefs which can be granted by the Court :-**

**1) Compensation or damages for injures :-**

The aggrieved person may claim relief by way of compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent.

**2) Right to reside in shared household (s.17) :-**

Every woman in a domestic relationship shall have right to reside in a shared household, whether or not she has any title, right or beneficial interest in the same. It further provides that aggrieved person shall not be evicted from the shared household by the respondent unless procedure established by now.

**3) Protection Orders ( S.18) :-**

If the magistrate satisfy that domestic violence is taken place or likely to be taken place he may pass a protection order in favour of the aggrieved person and thereby prohibition other party :-

- i)** committing any act of domestic violence.
- ii)** aiding or abetting commission of domestic violence.
- iii)** entering the place of employment of the aggrieved person.
- iv)** entering school of aggrieved child.
- v)** attempting to communicate or to contract the aggrieved person.
- vi)** alienating any assets used or held or enjoyed jointly by both parties.
- vii)** operating or alienating bank lockers account used or held or enjoyed jointly or alone by aggrieved person.
- viii)** causing violence to the dependents or a relative of the aggrieved person.

- ix) Communicating any other act to be specified in the protection order.

The Hon'ble Bombay Bombay High Court in the matter of :

(1) Nandkishore Damodar Vinchurkar Vs. Kavita Nandkishore Vinchurkar and others (MANU/MH/0957/2009) had an opportunity to consider the provisio and held that before passing orders the report of Protection Officer is not mandatory.

(2) In the case of Shaikh Ishaq Budhanbhai Vs. Shayaan Isdhaq Shanikh and others, reported in 2012 CRI.L.J. it was held by his Lordship of our parent High Court that, application filed by wife for protection order can not be viewed as complaint of offence u/s 31 Provision of bar of limitation for taking cognizance, laid down u/s 468, of Cr.P.C would not be applicable.

**3a) Duration of Protection Order. (Sec.25)**

A protection order passed under section 18 shall be in force till the aggrieved person applies for discharge of the order. Such discharge can be made only on application of aggrieved person. It is significant to note that aforesaid provision does not debar to respondent from filling an application before a magistrate for alteration, modification or revocation of any order passed under this Act.

**(4) Residence order – Sec.19**

(18) Wife has a right to reside in the shared household. She can not be expelled from there by her husband or any of his relative. This remedy is in the shape of residence order. A residence order would be following effect.

- 1) Restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person.

- II) Directing the respondent to remove himself.
- III) Restraining the respondent or his relative to entering in any portion of a shared household.
- IV) Restraining the respondent from alienating or disposing offshared household.
- V) Restraining the respondent from renouncing his right inshared household except with leave.

**5) Monetary reliefs – (sec.20)**

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.
- d. Maintenance for aggrieved person and her children. Such orders are in addition or includes order u/s 125 of Cr. P.C.

In case of **Sachin Suresh Bodhale Vs. Sou. Sushma Sachin Bhodhale 2015 (1) ABR (cri) 435**, wherein the Hon'ble Bombay High Court held that,

*'Compliance of order u/s 20 of the D.V. Act court can lay down its own procedure when no provision is available for implementation of order passed under Act, Procedure laid down u/s S.128, 421 of Cr.P.C. Providing as to ow amount of maintenance final or interim is to recovered is available. Issuance of non-bailable warrant by magistrate directly without following procedure laid down in Cr.P.C. not permissible.'*

**6) Custody Orders – (Sec.21)**

The magistrate may at any stage of hearing of application for protection order or for any other relief grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf.

In the case of

**(1) Mausami Ganguli V/s Jayant Ganguli, (2008) 7 SCC 673**

the 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. It has been held by the Supreme Court of India that in custody disputes, the concern for best interest of the child supersedes even statutory provisions on the subject outlined above.

**(2) Payal Agrawal v. Kunal Agrawal, 2014 Cri. L.J. 4281.**

“The D.V. Act contains not obstante clause but it having limited application. Despite being subsequent legislation it cannot have overriding effect on Family Courts Act, 1984. The Act of 1984 was specially meant for establishment of Special Court so that matters referred in explanation to Sec.7 of the Act can be dealt by the Special Courts established for the purpose whereas the object of enactment of D.V. Act was to protect the women from being victim of the domestic violence and to prevent the occurrence of domestic violence in the society. Therefore, the application filed by the respondent for custody of child or in the alternative to grant visiting right in his favour is not maintainable u/s 21 of the D.V. Act.”

**7) Compensation Order – (Sec.22)**

The Act provides the remedy to compensate the victim on account of domestic violence. The Act provides that in addition to other reliefs as may be granted under this Act, the magistrate may on an application may direct respondent to pay compensation and damages

for injuries including mental torture and emotional distress caused by the act of domestic violence.

(12) While deciding the application under section 12 of the Protection of Womens From Domestic Violence Act the rules laid down as per the protection of women from Domestic Violence as per the rule 2006 also needs to be considered. The breach of protection orders can lead to criminal prosecution as per Section 31 of the said Act. The summary trial procedure is to be followed.

(13) The Act provides for counsellings and other alternative dispute resolutions. Section 14 Provides that the magistrate may, at any stage of the proceeding under this Act, direct the parties singly or jointly to undergo counseling with any member of the service provider.

The Hon'ble Bombay High Court in sou moto *P.I.L. No. 104/2015, Dr. Jaya Sayade Vs. The State of Maharashtra Dr. Jaya Sagade Vs. State of Maharashtra reported in 2016(1) Mh.L.J. 947* has discussed in details when counseling and compromise is to be accepted as an alternative to granting of reliefs in the matter.

(14) Concerned Provisions Under Code of Criminal Procedure:-

(15) (I) Compliance of Order :-

Rule 6(5) provides that, all orders under this Protection of Womens From Domestic Violence Act, will be enforced the manner laid down under section 125 of the Code of Criminal Procedure. Proceedings for enforcement of orders under this Act may be initiated as provide under section 125(3) of the Code of Criminal Procedure. Magistrate may issue a warrant for levying the amount due in the manner provided for laying fine and may sentence a person for the whole or any part of the monthly amount or any other amount

mentioned in the order granting monetary relief.

**(II) Attachment :-**

In appropriate cases the Court may direct the respondents to pay the aggrieved person directly under section 20(6) of the Protection of Womens From Domestic Violence Act by attachment of property, etc.

**(III) Breach under Section 31 of The Protection of Womens From Domestic Violence Act, 2005 :-**

Proceedings under section 31 shall be tried summarily in accordance with the provision of Chapter XXI of Code of Criminal Procedure. The Court shall follow summary procedure as prescribed under section 262-264 Code of Criminal Procedure.

A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both. (2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused. (3) While framing charges under sub-section (1), the Magistrate may also frame charges under section 498-A of the Indian Penal Code ( 45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 ( 28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions.

**(16)** In recent times hue and cry is raised about misuse of the provisions of this Act. Nobody can deny this truth but that will not render the law to be flawed or make it a bad law. The proper study, knowledge and above all implementation of this Act is necessary.

Section 12 of the Said Act speaks about speedy disposal of the application i.e. within 60 days from its hearing. But the hearing of the said application becomes lengthy due to the procedure followed in hearing of the applications. The rule 6 of the Protection of Womens From The domestic Violence Rules 2006 provides that the application under section 12 shall be dealt with and the order enforced in the same manner as laid down under section 125 of the Code of Criminal Procedure.

(17) Till recent times there were no special protection officers appointed by the Government. A city like Kolhapur has also got protection officers few months back. The existing machinery which is already burdened is being used for implementation of this special law. Due to this the victims are being used by many selfish stake holders and now this Act itself is being abused. In many cases without even considering the actual needs of the aggrieved women petitions are being drafted by legal experts as per their intellectual understanding. At such times, It becomes the duty of Magistrate to separate the grain from the shaft and pass appropriate orders based on the facts of each case.

"The Judiciary Must  
hear those who cannot shout,  
Listen to those who cannot speak....."

Submitted with respect.