

TOPIC : LAW RELATING TO WOMEN :-

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005.

INTRODUCTION :

(1) Biggest problem that women facing today is violence against her. Violence are broadly of two kinds. One which occurred at public place and punishable under Sections 354, 509, 376 etc of Indian Penal Code and another one occurring with the family and punishable under sections 304-B, 306, 498-A of Indian Penal Code. In the male dominated society women have been victims of violence and exploitation. In India, women have been socially, economically, physically, psychologically and sexually exploited. In India, domestic violence is widely prevalent, but largely invisible. There is a plethora of loss on various aspects of the problem of women namely demand of dowry, sexual assault, female foeticide, trafficking, sexual harassment, but the most vulnerable area is domestic violence. The concept of sex equality, women's empowerment etc. granted under Constitution of India, but equality of status guaranteed by the Constitution is myth to millions of women, who are subject to various kinds of violence in their home. In India, domestic violence is widely

prevalent, but largely invisible in public domain. Ordinarily laws of cruelty, assault etc. against women was inadequate to deal with violence against women within domestic relationship. However, keeping in view of the rights guaranteed under Article 14, 15 and 21 of the Constitution, the legislation “The Protection of Women from Domestic Violence Act, 2005” was enacted to protect women from being victim of domestic violence and to prevent the occurrence of domestic violence in the society. The said Act came into force on 26th October, 2006. The Act is enacted for eliminating all sort of discrimination against women. It has been a unique combination of civil and criminal laws. The Act is progressive one not only because it recognize women who are in live in relationship, but also extend protection to other women in household including sisters and mothers. It is the bonafide legislation to enhance justice to women. This Act supplements the existing laws governing marriage, divorce, custody of children and property.

MEANING OF DOMESTIC VIOLENCE :

(2) 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. 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'. Even a single act of commission or omission may constitute domestic violence. In other words, women do not have to suffer a prolonged period of abuse before taking recourse to the law. The law says any definition of domestic violence is a human rights violation. Further, the law details the different forms of violence faced by women, and ensures that such interpretations are not left solely to the discretion of the judges.

(3) **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.

(4) **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.

(5) **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 say the abuser were to threaten the children, or relatives, of the aggrieved party will also be covered under this head.

(6) **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. This provision comes into play in instances of marital disputes, where the husband tends to deprive the wife of necessary money as a weapon. The law also sees a husband who sells off his wife's jewellery and assets as being guilty of economic abuse.

(7) A husband, under this provision, cannot dispose of household effects, cannot alienate assets or any other property in which the aggrieved person has an interest or entitlement by virtue of the domestic relationship. A husband may not sell or use *stridhan*

(dowry) and/or any other property jointly or separately held by the wife.

(8) In **Saraswathy Vs. Babu, AIR 2014 SC (Cri.) 493**, the facts are that the appellant wife having being harassed since 2000. Hon'ble Apex Court observed 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, and held that there is a continuance of domestic violence committed by the respondent-husband against the appellant-wife. In view of 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.”

OBJECT AND REASON :

(9) From the statement of objects and reasons attached to the act shows that intention of Act is to protect women from domestic violence faced by them in their households. Applicant under this Act

will be only woman. An important feature of the said landmark law is a Woman's right to Secure housing or alternative accommodation. It provides for a woman's right to reside in the matrimonial or shared household, though she has not having any title or right in the household. This right is secured by residence order which is passed by Court. This Act does not distinguish between married women and woman who are in live in relationships. It provides equal protection to both from abuse at the hands of their partners.

(10) The Act is a central enactment. The enactment is entrusted to the State Government. It is the State Government which appoint the Protection Officers, recognizes the Services Providers and authorizes medical facilities and shelter home to receive aggrieved woman. The Magistrate and the Protection Officers are the active agent to impose the provisions of this Act. This Act runs into total 37 sections. The moment a Domestic Violence takes place, the aggrieved woman may report the event to the Magistrate to refer the matter to the Protection Officers attached to that Court. She can also approach the Service Providers or the Protection Officers for help. This Act cast duty upon them to provide the aggrieved woman immediate medical help and residence to live in shelter home as and when necessary. The Protection Officer/Service Provider shall file Domestic Incident Report, before Magistrate. If any medical help and residence is not already provided in appropriate case, the Magistrate may direct the Protection Officer to arrange for the aggrieved woman those facilities.

The victims may be wives, sisters, mothers or any other female relative living in the shared household in Domestic Relationship. The respondents are male and may also be the female relatives of the respondents when the complainant woman is the wife or person living in married relationship with the respondents.

BENEFICIARY OF THE ACT :

(11) Under this Act, “ **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. The expression domestic relationship means a relationship between two persons who live or have, at any point of time, live together in a shared household. When they are related by consanguinity, marriage or through the relationship in the nature of marriage, adoption or a member of family living together as joint family. Even those women who are sisters, widows mothers, single woman or living with the abuser are entitled to legal protection. Any widow or unmarried sister or daughter who is harassed within the home can also resort to the new law. The law also protects women in fraudulent or bigamous marriages, or in marriages deemed invalid in law. The Act enable the wife or the female living in the relationship in the nature of marriage to file complaint against any relative of the husband. Thus, if a woman is living with a man who abuses her, she can take recourse to the

provisions of this law even though she is not married to him. Even women in past relationship like widow is also entitled to relief under this Act.

AGAINST WHOM THE COMPLAINT FILED

(RESPONDENT):

(12) The word “**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 the act provided that an aggrieved wife or female living in a relationship in a nature or marriage may also file a complaint under the act against the relative or male person.

DUTIES OF POLICE OFFICERS, PROTECTION OFFICERS AND SERVICE PROVIDERS :

(13) Under Section 5 the duties of police officer, Protection Officer, service provider and the Magistrate to inform the aggrieved person of her right to make an application for one or more reliefs under the Act, the availability of the services of service provider and the protection officers, her right to avail free legal services under the Legal Services Authorities Act, 1987 and her right to file a complaint under section 498A of the Indian Penal Code, wherever relevant. It is also envisaged that this section shall not relieve any police officer

from his duty to proceed in accordance with law on receipt of information as to commission of a cognizable offence.

(14) If the Aggrieved person or on her behalf the Protection Officer or a service provider request the person in charge of the 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. As also if the aggrieved person or on her behalf the Protection Officer requests to in charge of the medical facility, he is bound to provide the medical aid to the aggrieved person.

(15) This Act lays down the duties and the function of the Protection Officer to assist the Magistrate in discharge of his function, make a domestic incident report to the Magistrate, make an application to the Magistrate, if the aggrieved person so desire praying for issuance of protection order, legal aid, to make available a safe shelter home, get the aggrieved person medically examined if she has sustained bodily examined, ensure that the order for monetary relief under Section 20 of the Act is complied with and executed in accordance with the provisions of the Code of Criminal Procedure, 1973, and perform such other duties laid down by the Central Government, by rules. The Protection Officer shall be under the control and supervision of the Magistrate and the Government by and under the Act.

PROCEDURE FOR OBTAINING ORDER OR RELIEFS :

(16) An aggrieved woman 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 the Act, who shall fix the first date of hearing of the application ordinarily within three days of its receipt and shall be endeavor to dispose of every application within sixty days of the first hearing (Section 12 of the said Act). This is to because of the urgency with which the proceedings under the Act are expected to be concluded in an expeditious manner. These are two unique & vital procedural provisions of this Act. The Magistrate may at any stage of the proceedings, direct the parties, either singly or jointly, to undergo counseling with any members of the Service Provider so qualified and experienced. The member of service provider providing the counseling shall possess such qualification and experience as may be laid down by the Central Government or rules, where any counseling has been ordered under this clause, the Magistrate shall fix the next date of hearing of the case within the period not exceeding two months. As per G.R. dt. 30.10.2007 the State Government has appointed its service provider to provide following types of counsellings. (1) Psychiatric counselling of the aggrieved person (2) Family Counselling (3) Counselling for group of people who are victims of Domestic Violence & Family Disputes. The Magistrate may secure the services of a person, preferably a woman, engaged in

promoting family welfare for the purposes of assisting the Court in discharge of its functions (Section 14 of the said Act). The proceedings may be held in camera if either party so desires. The Magistrate, under the Act is empowered to pass Protection Order, Residence Order. Monetary Relief, Custody orders compensation orders, interim or ex-parte orders. As per Rule 15(6) of Rules, the summary trial procedure should be followed. Under section 25 the magistrate may alter, modify, or revoke any order passed by him on the receipt of application of aggrieved person or the respondent. Under Section 28 the Court can lay down its own procedure for disposal of application for any relief or for exparte order. Under Section 24 of the Act Court can supply copies of order passed free of charge to the parties to the application, to concerned police officer and the service providers.

(17) The procedure for obtaining orders or reliefs 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. Since the domestic violence takes place within the four walls of the house and is not visible in the public view, in order to prevent filing of malicious and false complaints under the Act, a safeguard has been provided under Sub

section 1 of Section 12 by providing that the Magistrate shall before passing an order granting a relief under the Act consider the report of the Protection Officer appointed under Section 8 of the Act. However, in **Shambhu Prasad Singh -Vs- Manjari, Delhi High Court [MANU/DE/0899/2012]** –

The issue arose that the trial court issued notice to the respondent on a complaint under section 12 of the act without calling for domestic incident report from protection officer. It was held that a calling of domestic incident report is not mandatory.

(18) The procedure for service of the notice provided under Section 13. The order of the Magistrate shall be served on the respondent within two days or such further reasonable time as may be allowed by the Magistrate. As per Rule 12 of Protection of Women from Domestic Violence Rules, 2006, modes of service of notice is provided. Hence, even police machinery can also be used as provided in Chapter VI of Cr.PC. as far as practicable.

(19) In any proceeding under this Act the Magistrate may secure the services of a suitable person preferably a woman whether related to aggrieved person or not, including a person engaged in promoting family welfare for the purposes of assisting the Court in the discharge of its functions in view of Section 15 of the Act.

JURISDICTION OF COURT :

(20) The first class magistrate court or metropolitan court shall be the competent court within the local limits of which :

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

Any order made under this Act shall be enforceable throughout India.

RELIEFS AVAILABLE UNDER ACT :

Section 17 - Right to reside in a shared household

(21) Section 17 lays down that irrespective of any contrary provision in any other law, every woman in a domestic relationship shall have the right to reside in the shared household and the aggrieved person shall not be evicted or excluded from the shared household by the respondent except in accordance with the procedure established by law.

(22) According to Section 2(s), a household where the aggrieved person lives/lived in a domestic relationship, either singly

or along with the respondent, is a shared household. Shared household also includes a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or person aggrieved has any right, title or interest in the shared household. However, the ownership pattern of the household cannot be affected by the Act in other words, the fact that a woman lives in a home legally owned by her husband does not under the Act alter the legality of ownership; it does not for instance transfer that ownership in whole or part to the wife.

Section 18 - Protection Order

(23) Section 18 provides that 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, may pass a protection order in favour of the aggrieved person.

Said order may contain an order prohibiting respondent from;-

- (a) committing any act of domestic violence or aiding or abetting therein,
- (b) 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,

- (c) attempting to communicate in any form whatsoever with the aggrieved person without the leave of the Magistrate,
- (d) alienating any assets, operating bank lockers or bank accounts belonging to both the parties jointly or to the respondent singly, including her *stridhan* or any other property held jointly or separately by them,
- (e) causing violence to the dependents, other relatives or any person giving the aggrieved person assistance from domestic violence, or
- (f) committing any other act as specified in the protection under.

(24) Said order shall remain in force till the aggrieved person applies for discharge. Further if the Magistrate is satisfied that there is change in circumstances which require alteration, modification or renovation of any order made under this Act, he may pass such appropriate order.

Section 19 - Residence orders

(25) This section provides that the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order;

- (i) restraining the respondent from dispossessing or disturbing possession of the aggrieved person from shared household,
- (ii) directing respondent to remove himself from the shared household,
- (iii) restraining respondent or his relatives from entering the shared household,
- (iv) restraining the respondent from alienating or disposing of or encumbering the shared household,
- (v) restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate, or
- (vi) directing the respondent to secure alternate accommodation for the aggrieved person of the same level as enjoyed by her in the shared household or to pay rent for the same.

(26) It is also provided in this section that no order of removing from share household shall be passed against a respondent if she is woman. Magistrate is empowered to impose additional conditions and pass any other direction in order to protect the safety of the aggrieved person or her child. It is also provided in this section that the Magistrate may impose on the respondent an obligation to discharge rent and other payments and to direct the respondent to return to the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled.

Section 20 - Monetary orders

(27) This section empowers the Magistrate to pass orders for grant of monetary relief to the aggrieved person from the respondent to meet the expenses incurred and losses suffered including loss of earnings, medical expenses, loss to property and maintenance of the aggrieved person and her children. Maintenance under this provision may be in addition to maintenance granted under Section 125 of Code of Criminal Procedure, or any other law for the time being in force. Such monetary relief shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed. Magistrate may grant lumpsum or monthly payments for the monetary relief granted to aggrieved person. On failure of the respondent to make payments of the monetary relief, 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 respondent. As per provisions of Section 28 of this Act, provisions of Code of Criminal Procedure are applicable for the proceedings under Section 20 of this Act, and as such provisions of Section 125(3) of Cr.P.C. can be invoked for recovery of the monetary reliefs granted to aggrieved person.

Section 21 - Custody Orders

(28) This section 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.

Section 22 - Compensation Order

(29) This section lays down that in addition to other reliefs which may be granted under the Act, the Magistrate may, on an application by the aggrieved person, 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.

Section 23 : Power to grant interim and ex-parte orders.

(30) In any proceedings before him under this Act, the Magistrate may pass such interim order as he deems just and proper. 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 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 form, 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.

(31) It is held by the Hon'ble Bombay High Court in **Vishal Damodhar Patil -Vs- Vishakha Vishal Patil, 2009 Cri. L. J., 107** that
While considering the question of granting the ex-parte ad-interim or interim relief, the Magistrate will have to consider the nature of the reliefs sought in the main application under Section 12(1) of the said act in as much as an interim relief under Section 23 of the said Act can be granted in aid of the final relief sought in the main application. It is also held that, there is no need for separate application for interim reliefs.”

PROVISION OF APPEAL :

(32) As per section 29 all the orders under 'Act' are appealable, whether interim or final. However, appellate Court shall not usually interfere with the discretionary powers of the Magistrate. The appellate Court shall interfere only if the discretion has been exercised arbitrarily, capriciously, perversely or it is found that the Magistrate ignored the settled principles of law regulating the grant or refusal of interim relief. The appeal shall not be maintainable regarding purely procedural orders which do not affect the rights and liabilities of the parties.

PENALTY FOR BREACH OF PROTECTION ORDER :

(33) Section 31 provides that a breach of protection order or an interim protection order by the respondent shall be an offence under the Act punishable with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both. Sub-section (2) provides that the offence of breach of protection order or interim protection order shall be tried as far as practicable by the Magistrate who had passed the order which is alleged to have been breached. Sub-section (3) provides that the Magistrate, while framing charges regarding breach of order, may also frame charges under Section 498-A or any other provision of the Indian Penal Code or the Dowry Prohibition Act,

1961 in case the fact disclose the commission of any offence under those provisions.

(34) Rules 15 of Domestic Violence Act deals with the Procedure on Breach of Protection Orders.

- (1) An aggrieved person may report a breach of protection order or an interim protection order to the Protection Officer.
- (2) Every report referred to in sub-rule (1) shall be in writing by the informant and duly signed by her.
- (3) The Protection Officer shall forward a copy of such complaint with a copy of the protection order of which a breach is alleged to have taken place to the concerned Magistrate for appropriate orders.
- (4) The aggrieved person may, if she so desires, make a complaint of breach of protection order or interim protection order directly to the Magistrate or the Police, if she so chooses.
- (5) If, at any time after a protection order has been breached, the aggrieved person seeks his assistance,

the Protection Officer shall immediately rescue her by seeking help from the local police station and assist the aggrieved person to lodge a report to the local police authorities in appropriate cases.

- (6) When charges are framed under Section 31 or in respect of offences under Section 498-A of Indian Penal Code, 1860 (45 of 1860), or any other offence not summarily triable, the Court may separate the proceedings for such offences to be tried in the manner prescribed under Code of Criminal Procedure, 1973 (2 of 1974) and proceed to summarily try the offence of breach of Protection Order XXI of the Code of Criminal Procedure, 1973 (2 of 1974).
- (7) 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 be deemed to be a breach of protection order or an interim protection order covered under the Act.
- (8) A breach of a protection order or an interim protection order shall immediately be reported to the local police station having territorial

jurisdiction and shall be dealt with as a cognizable offence as provided under Sections 31 and 32.

- (9) While enlarging the person on bail arrested under the Act, the Court may, by order, impose the following conditions to protect the aggrieved person and to ensure the presence of the accused before the Court, which may include --
- (a) an order restraining the accused from threatening to commit or committing an act of domestic violence ;
 - (b) an order preventing the accused from harassing, telephoning or making any contact with the aggrieved person ;
 - (c) an order directing the accused to vacate and stay away from the residence of the aggrieved person or any place she is likely to visit ;
 - (d) an order prohibiting the possession or use of firearm or any other dangerous weapon ;
 - (e) an order prohibiting the consumption of alcohol or other drugs ;

- (f) any other order required for protection, safety and adequate relief to the aggrieved person.

PENALTIES :

(35) Section 32 lays down that the offence of breach of protection order by the respondent shall be a cognizable and non-bailable offence and the Court may conclude on the sole testimony of the aggrieved person that the offence has been committed.

(36) Section 33 provides that any Protection Officer who fails or refuses to discharge his duties as directed by the Magistrate in the protection order shall be punished with imprisonment of either description which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

(37) Section 34 provides that no prosecution or other legal proceeding shall lie against the Protection Officer except on a complaint filed with the previous sanction of the State Government or an officer authorized by the State Government for the purpose.

CONCLUSION :

(38) The Act provides speedy remedies to women who are subjected to domestic violence within the four walls of their house. It seeks to protect women from physical, emotional, sexual and economic abuse. However the law at present is inadequate to tackle the problem of domestic violence effectively. Implementation/enforcement of orders is a major hindrance though positive directions are given under the Act. The confusion regarding scope of the Act and nature of reliefs has been removed to certain extent due to the interpretations and clarifications made by the Hon'ble Apex Court and Hon'ble High Courts. This Act is designed to serve the purposes viz. Protection of women from domestic Violence both explicit and dormant as wide spread evil in several families. This Act is passed in the Parliament in response to a World wide demand for such legislation to prevent such occurrences in future and to assure families peaceful co-existence amongst their members. It is enacted to effectively protect the rights of women to live decent and dignified life in the family. After realizing that such effective protection can be provided only by establishing adequate machinery to attend the difficulty of aggrieved woman and keeping this in mind the provisions are made in the Act regarding Service Providers, Protection Officers, etc. and imposed several duties on them with the Magistrate.

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Latest Pronouncement on
LAW RELATING TO WOMEN :-
THE PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT, 2005.

- (1) **Deepak Gupta V. Sonu Gupta & others, Cri. Rev. Appln. No. 215/14 Bombay High Court, Hon'ble M. L. Tahaliyani, J. on dated 1/10/2014.**

“The maintenance order under Section 125 of Cr.P.C. or under Protection of Women from Domestic Violence Act can be passed on the basis of palpable income of husband.”

- (2) **Amitabh Upadhyia v. State of Maharashtra + 1, Cr.Appln. No. 1173/13, Bombay High Court, Hon'ble Sadhna S. Jadhav, J. dated 25/9/2014.**

“In said case, respondent No.2 wife withdrawn from the society of her husband in the year 2005 and since then there was no domestic relation between them. The acts of domestic violence alleged by wife not covered when appellant and respondent No.2 were not in domestic relation but happened after two year and five years since they had been divorced by mutual consent. Hence it cannot be said that appellant committed any offence while he was in domestic relationship.”

- (3) **Sudha Mishra v. Surya Mishra, R.F.A. No.,299/2014, C.M.No. 11736/2014 Order dated 25/7/2014, Delhi High Court.**

“Daughter in law cannot assert here right, if any, in the property of her parents in law wherein her husband has no right, title or interest. She cannot continue live in such house of her parents in law against their consent and wishes. In fact, an adult son or daughter has no legal right to occupy self acquired property of the parents against their wishes. A son or daughter if permitted to live in the house, then they occupy the position as gratuitous licensee and if such licence is revoked, then they have to vacate such property.”

- (4) **AIR 204 NOC 503 Orissa. Namita Mohanty and another -vs- Pankaja Kumar Mohanty and others.**

“There is no need to wait for domestic incident report of protection officer for issuance of notice.”

“To issue direction to undergo counselling is not compulsory when Magistrate comes to the conclusion that matter can be settled.”

- (5) **Rajendra D. Seth v. Rekha Zha, 2014 Cri.L.J. (NOC) 443 (Bom.) dt.11/4/2014.**

“The first marriage of the respondent/husband still subsisting. The applicant and respondent were living together which admitted by the respondent. It can prima facie be said that there was domestic relation between them. Applicant is entitled for interim maintenance.”

“It is also held that if respondent is not the owner of the shared household, the owner can take action for evidence of applicant.”

- (6) **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) **Santosh Bakshi v. State of Punjab and others, AIR 2014 SC 2966.**

“If complaint of domestic violence made by women against a member of family, the police without proper verification and investigation cannot submit report that no case is made out.

Investigating agency is required to make proper inquiry not only from the members of the family but also from neighbours, friends and others. After such inquiry, the investigating agency may form a definite opinion and file report. It is for the Court to decide finally whether to take cognizance of offence under any provisions of the D.V. Act.”

(8) **Anil v. Sudesh, 2014 Cri. L.J. 2015. (Punjab & Haryana High Court)**

“In said case the petitioner contended that respondent was residing separately either parental home since 1/1/1999 and D.V. Act came into force w.e.f. on 26/10/2006. He contended that Act is not retrospective, hence respondent not entitled for any relief under the Act. It is held that petitioner seeking relief prospectively and not retrospectively, hence application by her is maintainable.”

(9) **Mohd. Rajab Ali & others v. Mustt. Manjula Khatoon, 2014 Cri. L.J.2162 (Gauhati High Court)**

(a) “The expression joint family occurring in definition of domestic relationship and shared household has to be given an interpretation which will be consistent with the object of the Act for the purpose of maintainability and obtaining reliefs under D.V. Act. The expression joint family would mean a household where members of family live in commensuality and not joint family as understood in Hindu Law.”

(b) Claim for Monetary relief and compensation can be made against husband and adult male members of his family, as respondent means any adult male person who is, or has been in domestic relationship with aggrieved person and against whom aggrieved person has sought any relief under Act and aggrieved persons can file complaint against relative of husband or male partner.

(c) Claim for rent or alternative accommodation can be made against husband and not against in-laws or other relatives.