DISTRIBUTION AND SESSIONS COURT, AURANGABAD.

WORKSHOP ON

CIVIL
"Law of Precedents"

1. Ratio decidendi.
2. Obiter dicta.
3. Per-incuriam.
4. Sub silentio.
5. Stare decisis.
6. Doctrine of prospective over ruling.

CRIMINAL
"Protection of Women from Domestic Violence Act, 2005"

2. Monetary reliefs.
3. Protection order.
4. Residence order.
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6. Power to grant interim and exparte orders.
7. Procedure for getting reliefs and limitation.
8. Effect of breach of orders.

Held on 8th February, 2015
### I N D E X

#### C I V I L
"Law of Precedents"

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#### C R I M I N A L
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"Protection of Women from Domestic Violence Act, 2005"

INTRODUCTION

Domestic violence is physical, sexual or psychologically abuse directed towards one's spouse, partner, or other family member within the household. Domestic violence generally occurs when a spouse or intimate partner uses physical violence, threats emotional abuse, harassment or stalking to control the behaviour of his or her partner. Partners involved in domestic violence and abuse may be married, heterosexual, homosexual, living together, separated or dating.

Domestic violence is a form of human rights, violation is an impediment for the development of woman folk. A number of countries have formulated laws in order to check those violation. The domestic violence against women is the most deplorable violence committed against the woman, as it is perpetrated none other than their family members.

This law is enacted with a view to provide reliefs to a victim woman subjected to domestic when the provisions of civil law were falling short. The act seeks to cover those women who are or have been in a relationship with the abuser, where both the parties have lived together in a shared household or a related by consanguinity, marriage or a relationship in the nature of marriage or adoption; in addition relationship with family members living together
as a joint family are also included. By enacting this law the legislature have provided the various reliefs to deserted woman like maintenance, residence order, protection, monetary relief etc.

**REPORT OF PROTECTION OFFICER.**

Section 4 of The Protection of Women from Domestic Violence Act, 2005 seeks to provide that any person who has reason to believe that an act of domestic violence has been or is being committed, such person may inform the Protection Officer having jurisdiction in the area either orally or in writing. In case the information is given to the Protection Officer orally, he or she shall cause it to be reduced into writing and shall ensure that the same is signed by the person giving such information and in case the informant is not in a position to furnish written information, the Protection Officer shall satisfy and keep a record of the identity of the person giving such information.

Upon receipt of a complaint of domestic violence, the Protection Officer shall prepare a domestic incident report in Form I 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 been committed has taken place and to the service providers in that area.

While submitting the report, the Protection Officer is required to give details of the complainant/aggrieved person, details of
children, if any, of the aggrieved person, incidents of domestic violence, list of documents attached, if any.

Section 12(1) of the Act lays down that an aggrieved person or Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more of the reliefs under the 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".

The phraseology adopted while wording the proviso clearly demonstrates that before passing any order on the application, Magistrate is under obligation to consider domestic incident report, if any, received by him. Thus, obligation cast upon the Magistrate to consider the report arises, only if, he is in receipt of any domestic incident report and not otherwise. This proviso came to be subjected to the judicial scrutiny from time and again challenging the order passed by the Magistrate without securing report of the domestic violence from the Protection Officer or the service provider as the case may be.

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.
The Hon’ble Bombay High Court in the matter of Nandkishor Damodar Vinchurkar Vs. Kavita Nandkishor Vinchurkar and others (MANU/MH/0957/2009) had an opportunity to consider the proviso and held that before passing orders the report of Protection Officer is not mandatory. It is observed that;

The point as regards calling of the report from the Protection Officer or Service Provider is concerned one will have to interpret provisions of Section 12 of the Act and the said interpretation has to be in favour of the person, who is in need of maintenance and in particular interim maintenance. Report from the Protection Officer or Service Provider has to be gathered and it would assist the Court for the purposes of doing complete justice in the matter. At the same time, it is expected that the trial Court has to pass an interim order as early as possible. If the trial Court, who is required to pass an interim order, keeps on waiting to get the report of the Protection Officer or Service Provider, it would entail the delay and the idea of considering the case of a needy person at the interim stage will be actually defeated. Therefore, I am inclined to observe that it is not necessary in each and every case to obtain a report from the Protection Officer or Service Provider to decide application for interim relief. If on the basis of record before the Court, the Court is in a position to arrive at a just and proper conclusion, it will be open for the Court to do so and decide the matter accordingly.
MONETARY RELIEFS.

Section 20 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 including maintenance under, or in addition, to Section 125 of the Code of Criminal Procedure, 1973 or any other law for the time being in force. Sub-section (2) provides that the monetary relief shall be adequate, fair and reasonable and consistent with the standard or living to which the aggrieved person is accustomed. This section also empowers the Magistrate to order lump sum or monthly payments for maintenance. Sub-section (6) provides that on the 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.

The Act also encompasses claims compensation arising out of domestic violence and includes maintenance similar to that provided for under section 125 of the Code of Criminal procedure. Nevertheless, the claim for compensation is not limited to maintenance as allowed by that provision. It is noteworthy that the maintenance available under this section must be in correspondence with the
lifestyle of aggrieved party. What contemplated to be “income” as provided under section 20(1) (d) of the Protection of Women From Domestic Violence Act, 2005, under section 125 of the Criminal Procedure Code, or any other similar legislation is that the wife, of her own volition, and upon her educational or professional qualifications, pursues a settled career either by way of service or profession or business in which she derives her own independent, separate income or otherwise earns incomes by way of investments, rents, profits or the like from any settled source of income. The sufficiency or otherwise of such income is required to be seen and calculated to grant or reject her claim of maintenance.

“19. Even if it is presumed that the Appellant has taken 'Khula' (divorce) on 9th May, 2008 and the 1st Respondent is no more the husband, the question arises that in such case whether the erstwhile-wife can claim one or other relief as prescribed Under Sections 18, 19, 20, 21, 22 and interim relief Under Section 23 of the Domestic violence Act, 2005, if domestic violence had taken place when the wife lived together in shared household with her husband through a relationship in the nature of marriage.

30. In the present case, the alleged domestic violence took place between January, 2006 and 6th September, 2007 when FIR No. 224 of 2007 was
lodged by the Appellant Under Section 498A and 406 Indian Penal Code against the 1st Respondent and his relatives. In a writ petition filed by 1st Respondent the High Court refused to quash the said FIR against him observing that prima facie case Under Section 498A was made out against him. Even if it is accepted that the Appellant during the pendency of the SLP before this Court has obtained ex parte Khula (divorce) under the Muslim Personal Law from the Mufti on 9th May, 2008, the petition Under Section 12 of the Domestic Violence Act, 2005 is maintainable.

31. An act of domestic violence once committed, subsequent decree of divorce will not absolve the liability of the Respondent from the offence committed or to deny the benefit to which the aggrieved person is entitled under the Domestic Violence Act, 2005 including monetary relief Under Section 20, Child Custody Under Section 21, Compensation Under Section 22 and interim or ex parte order Under Section 23 of the Domestic Violence Act, 2005”

The Apex Court recently ruled that a complaint filed by a woman under the D.V. Act can be sustained under the Law even if her marriage has been dissolved. The ruling came in the
case of Sough Mumbai Resident who had obtained “Khula” to put an end of her three years old marriage under Muslim Personal Law. An act of domestic violence once committed, the subsequent decree of divorce will not absolve the liability of husband from the offence committed or to deny the benefit to which wife is entitled under the Act, including Monetary Relief under Section 20, Child Custody under Section 21, Compensation under Section 22 and Interim or Ex-parte under Section 23 of the Act.

**PROTECTION ORDER.**

A protection order made under section 18 shall be in force till the aggrieved person applies for discharge. (2) If the Magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act, he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

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.

In the case of **Sou. Sandya Manoj Wankhde v/s Manoj Bhimrao Wankhede** reported in **2011 (2) SCALE 94** Hon'ble Supreme Court in its judgment held that Under this Section appropriate relief can be granted against relatives of husband including women u/s 18 (e) of the Act.

In the case of **Shaikh Ishaq Budhanbhai vs. Shayeen Ishaq Shaikh and others, reported in 2012 CRI. L.J. 4518**, 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.

**RESIDENCE ORDER.**

Section 19 provides that the Magistrate may on being satisfied that domestic violence has taken place pass a residence order restraining the respondent from dispossessing or disturbing the possession of the aggrieved person from the shared household, directing the respondent to remove himself from the shared household,
restraining the respondent or his relatives from entering the shared household, restraining the respondent from alienating or disposing of or encumbering the shared household, restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate, or 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. It is also provided in this section that no order shall be passed against any person who is a woman directing her to remove herself from the shared household. Sub-section (2) empowers the Magistrate to impose additional conditions and pass any other direction in order to protect the safety of the aggrieved person or her child. Sub-section (3) provides for execution of a bond by the respondent for prevention of the domestic violence. Sub-section (5) empowers the Magistrate to pass an order directing the officer-in-charge of the concerned police station to give protection to the aggrieved person or to assist in implementation of the residence order. 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.

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. Out of which residence order is one of the important relief, which is explained under section 19 of the Protection of Women of Domestic Violence Act 2005.

The right to residence provision has been hailed as one of the most unique and important provisions of the Act. It enables a victim of domestic violence to take recourse to independent relief that provides for protective injunctions against violence, dispossess from the matrimonial home and alienate residence. While the Act does not create any new rights which were not available to women prior to this enactment through statutory or judge made laws, it provides a single window and simple procedures for claiming rights which were scattered under different statutes and legal provisions.

The Act recognizes the right to reside in a shared household and provides that an aggrieved person shall not be evicted or excluded from the shared household or any part of it except with the procedure established by law. Madras High Court in V. Ramasubramanian J. In Vandana Vs T Srikanth and Krishnamachari opined that a "healthy and correct interpretation of section 2(f) and 2(s) would be that the words "live" or "have at any point of time lived" would include within their purview the "right to live". The judgment clarified that the woman's right to protection under section 17 of the Act, co-exists with her right to live in the shared household and is not dependent on whether or not she had
marked her physical presence in the shared household. However, this right has been restricted by the judgment of Supreme Court in 2006(8) SCC 1002 S.R. Batra Vs Smt. Tarun Batra. The Apex Court held that 'Shared household' means only the house belonging to or taken on rent by the husband or house which belongs to the joint family in which the husband is one of the members. It has also been observed therein that the property exclusively owned by the mother of the husband cannot be called 'shared household' as per the definition found in section 2(s) of the Protection of Women from Domestic Violence Act, 2005. Therefore, she cannot claim a right to residence in that property. The impact of this judgment is that an aggrieved woman cannot claim a right of residence in the property of her in-laws.

A Remarkable decision was taken by the Delhi High Court in Vijay Verma Vs State N.C.T. of Delhi and Anr, in defining the scope of "shared household" under the Act in a gender-sensitive manner. The Court clarified the scope of this right by stating that where a family member leaves the house to establish his own shared household separately and establishes her own household, she could not claim a right to reside under the Act on the basis of a "domestic relationship". The case was with regard to the issue of denial of right to reside.

Under Clause (a) of sub-section (1) of Section 19 the respondent can be restrained from disturbing the possession of the
aggrieved person of the shared household whether or not the respondent has any legal or equitable interest in the shared household. In a case where an aggrieved person is a wife or a female referred to in proviso to sub-section 2 (q), if the relative of the husband or the male partner was to include only the male relative, the grant of residence order in terms of Clause (a) will serve no purpose and will become redundant as such order will not bind the female relatives of the husband or the male partner, as the case may be, who are residing in the shared household. The same is the case with the residence order under Clause (c) of sub-section (1). It must also be remembered that Section 2 (q) specifically uses the word 'adult male member or male partner'. If the intention of the legislature was that the relative of the husband or the male partner referred to in the proviso has to be only a male relative, the legislature would have specifically used the word 'male' in the proviso. As set out earlier, there is another reason why the relative of the husband or male partner referred to in the proviso to Section 2(q) cannot be only a male relative. The said reason is that the proviso to sub-section (1) of Section 19 clearly implies that the residence order in terms of any of the clauses of sub-section (1) of Section 19 except Clause (b) can be passed against a respondent who is a woman. It is obvious from the proviso to Section 2 (q) that a woman can be a respondent only in a case where the aggrieved person is the wife or the female referred to in proviso to Clause (q) of Section 2. From the proviso to sub-section (1) of Section 19 it becomes crystal
clear that the word 'relative' used in proviso of Section 2 (q) is not restricted to a male relative of the husband or a male relative of the male partners. Therefore, the word 'relative' in proviso to Section 2 (q) includes a female relative. A relief can be granted against a female relative of a husband or a male partner only if a relief against such a relative is capable of being granted under Sections 18 to 22.

**CUSTODY ORDERS.**

Section 21 lays down that notwithstanding anything contained in any other law for the time being in force the Magistrate, 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/his 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.

In the matters relating to custody, education and maintenance of children, the Court is invested with a very wide discretion and broad powers. In the welfare of children the Court can pass any orders, since the words used as : the Court may pass any order " as it may deem just and proper". Justness or properness of the order is to be looked at from the interest of the children, as it is their interest which should be uppermost to the mind of the Court. It is
certainly not the interest of any party, innocent or otherwise. It is also not a mere question of balance of convenience.

The Court has power to pass any order in respect of children, by placing them into the custody of either parents or of a third persons or of an institution. It may give custody to one parent and care and control to the other. It may pass any interim or permanent orders and may vary them, change them or rescinded them at any time. Similarly, orders can be passed in regard to maintenance and education of children.

The Court has the power to refuse to exercise the jurisdiction but it would do so only in very exceptional cases.

In deciding the question of custody the Court would take into consideration the following.

i) Welfare of the child which is of the paramount consideration.
ii) Wishes of the parents.
iii) Wishes of the child.
iv) Age and sex of the child.

The Court is also free to consider any other matter which helps it to determine the question in the interest of the child.

Whenever a question arises before the Court pertaining to the custody of a minor child, the matter is to be decided not on consideration of legal rights of parties but on the sole and predominant
criterion of what would best serve the interest and welfare of the minor.

The English and Indian decisions are replete with such statements that (i) the children of tender years should be committed to the custody of the mother, (ii) older boys should be in the custody of the father, and (iii) older girls in the custody of the mother. But these are judicial statements of general nature and there is no hard and fast rule. As to the children of tender years, it is now a firmly established practice that mother should have their custody since father cannot provide that material care and affection which are essential for their proper growth. It is also now accepted that for proper psychological development of child of tender years mother's care is indispensable.

Whenever question of custody of minor child is concern, it is adopted approach that it is given in favour of mother unless it is brought on record that the mother suffers from some disqualification by virtue of her character, total inability to take care of the child or such other handicap. Question of custody of minor children is never static problem and the issue can be re-examined at any stage. Hon'ble Apex Court in *Nil Ratan Kundu and another Vs. Abhijit Kundu*, reported in 2009(9) SCC 413, observed that……

The principles in relation to custody of minor child are well settled. 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.

Mother's lap is God's cradle for a child of this age, and that as between father and mother other things being equal, a child of such tender age should remain with the mother.

In respect of older children our Courts took the view that the male children above the age of sixteen years and female children above the age of fourteen years should not ordinarily be compelled to live in the custody to which they object. However, even the wishes of the matured children will be given consideration only if they are consistent with their welfare.

As per pronouncement made by Hon'ble Apex Court and Hon'ble High Court, though custody of minor with the mother is safer than father but it shall not be the straight jacket formula that in every case mother's custody is advisable and father should be deprived from that. It depends upon case to case how the discretion should be exercised in favour of mother or father. It enjoins duty on the court to see welfare of the child while allowing custody.

In the case of 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. 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 outlines above.

**POWER TO GRANT INTERIM AND EXPARTE ORDERS.**

Perusal of Section 23 of the Act, it states that if the Magistrate or Court is satisfied that the application prima facie discloses that Respondent is committing or has committed an act of domestic violence or that there is likelihood to commit such an act, he may grant an exparte order on the basis of affidavit of the aggrieved person. Such reliefs can be granted even before issue of summons to the respondent or appearance of respondent or before filing reply by respondent. Such ad-interim reliefs may be granted in case of grave urgency like as medical emergency, expenses for delivery, admission of children in school or college, grave danger of physical abuse, remarriage of the husband and threat of introducing another woman into the said household etc.

Thus, Section 23 confers power on the courts to grant interim relief and exparte interim reliefs. Any such interim order can be altered, modified or revoked by recording the reasons in writing by the Magistrate, if he deems fit where either party satisfies him about the change in circumstances. As such, an appeal can be preferred against any order of Magistrate before the Sessions Court within 30 days from when the order is served upon the party.
In the case of Abhijit Bhikaseth Auti Vs. State of Maharashtra & Another reported in 2009 Cr.L.J. (Bom) : AIR 2009 (NOC) 808 (Bom.) Hon'ble Bombay High Court held in view of section 23,18,19,28 and 30 of the Act " the Magistrate has discretionary power to grant interim injunction in respect of shared accommodation". It was also observed that " Appellate Court should be very slow in interfering with such orders unless the orders are perverse or patently illegal".

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 are no separate application filed for interim maintenance and Residence order even though Magistrate can grant interim relief".

In the case Sheetal Hitesh Thawkar Vs. Hitesh Vijay, 2012 Cr.L.J. 516 (Bom.) it is observed that " Even assuming that the interim order passed u/sec. 23 for interim relief is appealable under section 29 of the Act, it is specifically observed by this court that the appellate court will interfere with it only if it is found that the discretion has been exercised arbitrarily, capriciously, perversely or if it is found that trial court has ignored settled position of law regulating grant or refusal of interim relief.
PROCEDURE FOR GETTING RELIEFS AND LIMITATION.

Section 28 provides that proceedings under the Act relating to application and orders for reliefs and offence of breach of protection order or interim protection order by the respondent shall be governed by the provisions of the Code of Criminal Procedure, 1973. Sub-section(2) envisages that the Court may lay down its own procedure for disposal of applications for any relief or for ex parte order.

Section 12 of the Act provides that, 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. Thus, the aggrieved person or the protection officer or any other person on behalf of the aggrieved person may present application for seeking relief.

Rule 7 of the Rules 2006 provides that, every affidavit for obtaining ex part order under Sections 23(2) shall be filed in Form III.

Sub-section (4) of Section 12 of the Act provides that, the Magistrate shall fix first date of hearing which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

Sub-section (5) of Section 12 of the Act provides that, the Magistrate shall endeavor to dispose of every application made under
sub-section (1) within a period of sixty days from the date of its first hearing.

Section 13(1) provides that, a notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

Rule 12 of the Rules 2006 provides the manner in which the notices shall be served. The sub-rule (1) provides that, the notices shall contain names of the persons, nature of the domestic violence and such other details which may facilitate the identification of person concerned. Sub-rule (2) provides for the manner of the service of notice. For the said purpose, provision of Order V of Civil Procedure Code or the provisions under Chapter VI of Code of Criminal Procedure as far as possible may be adopted.

Section 16 of the Act provides that, if the Magistrate considers that the circumstances of the case so warrant, and if either party to the proceedings as describes, he may conduct the proceedings under this Act in camera.

Section 18 of the Act provides that, the procedure for passing protection order. Accordingly, the Magistrate may, after
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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.

Rule 15 of the Rules, 2006 provides the procedure in case of breach of protection order. Sub-rule (1) provides that, an aggrieved person may report the breach of protection order or an interim protection order to protection officer. The protection officer shall forward copy of such complaint with copy of protection order to concerned Magistrate. Sub-rule (4) provides that, aggrieved person may make a complaint of breach of protection order or interim protection order directly to the Magistrate or police.

When the charges are framed under Section 31 or in respect of under Section 498-A of the IPC or any other offence not summary triable the Court may separate the proceeding for such offences to be tried in the manner prescribed under Cr.P.C. and proceed to summary try offence of breach of protection order.

Section 23 of the Act provides for power to grant interim an ex parte order. Sub-section (2) of Section 23 provides that, the Magistrate on being satisfied may grant an ex parte order on the basis of affidavit of the aggrieved person under Section 18, 19, 20, 21 and 22 against the respondent. Section 24 of the Act provides for
supplying copies of order free of cost to both the sides and police station.

Section 27 of the Act deals with the places, where the application may be filed. Accordingly, the application may be filed within the local limits of which

(a) the person aggrieved permanently or temporarily resides or carries on business or is employed; or
(b) the respondent resides or carries on business or is employed; or
(c) the cause of action has arise,

shall be the competent Court to grant a protection order and other orders under this Act and to try offences under this Act.

The Act does not provide for limitation. However, when the remedy is provided under the Act, and limitation is not provided, the proceeding should be filed within the reasonable period. What should be reasonable period is a matter depending upon the facts and circumstances of the case. However, as held by the Apex Court and High Courts in various pronouncement that the reasonable period is three years. The Hon'ble Bombay High Court in the matter of Opposite Green Park vs Public Prosecutor High Court [Cri. W.P. 631 & 815-11 decided on 26 June 2013] held that; In strict sense, no time limit is fixed for filing of the proceedings. For consideration of such proceeding, the purpose behind provisions of Act need to be kept
in mind and particularly when definition of domestic relationship shows that a person like respondent is required to show only that there was relationship between her and the husband at any point of time as described in the definition. The Hon'ble Bombay High Court in the matter of Sejal Dharmesh Ved vs. The State of Maharashtra & Ors. [Cri. Application no. 160 of 2011 ] has held that “A wife who lived in a domestic relationship earlier, but which ceases only because of any domestic violence can certainly file an application for such domestic violence that took place whilst she lived in that relationship. Such application is required to be filed within a reasonable time to show that relationship would give her the cause of action to sue under the D.V. Act for the reliefs under the Act.” For the breach of protection order, the period of limitation will be governed by Section 468(2) (b) of the Cr.P.C. the offence under section 31 is cognizance and non-bailable.

**EFFECT OF BREACH OF ORDERS.**

A magistrate may pass protection order, residence order, monetary reliefs, custody orders and compensation orders. The magistrate may also pass interim and ex-parte orders in the nature of protection order, residence order, monetary reliefs, custody orders and compensation orders. These reliefs are covered under Sections 18, 19, 20, 21, 22 and 23 of the Act.
Section 20 (6) of the Act provides that, upon failure on the part of the respondent to make payment as ordered under Section 20 (1) of the Act, 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.

Rule 6(5) of the Protection of Women from Domestic Violence Rules, 2006 (hereinafter referred to as "the rules" in brief) states that, the orders passed under the Act shall be enforced in the manner laid down under Section 125 of the Code of Criminal Procedure.

In Manoj Anand Vs. State of Uttarpradesh, Criminal Revision No.635/2011 with Writ Petition No. 17658 of 2010, decided on 10.02.2010, it has been held that, a maintenance order including interim maintenance order passed under Section 23, cannot be enforced through Section 31 and it can be enforced in the same manner as laid down under Section 125 of the Code of Criminal Procedure.

As per Section 31 of the Act, 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. Whenever a respondent commits a breach of any protection order under this Act, he commits an offence which is cognizable and non-bailable.

The language of Section 31 has used the term 'breach of protection order', so it appears that it is only the breach of Section 18 which constitutes the offence because ‘protection order’ has been described in Section 18. However, Rule 15(7) of the Rules says 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 a breach of protection order or an interim protection order covered under the Act. The language of this rule suggests that breach of any other order like residence order, custody order etc. shall also be an offence as defined under Section 31. It would be of very restrictive meaning if operation of Section 31 is accepted to cover only the protection order as mentioned in Section 18. Under Section 18 a magistrate may pass a protection in order to restrain the respondent from committing any act of domestic violence. Definition of domestic violence under Section 3 of the Act is very wide in the sense that it covers any act, omission or commission or conduct which harms or injures or endangers the health or safety, life, limb or well being, whether mental or physical of aggrieved. An act of dispossession from the shared household may lead to endanger the safety, life, limb or well being of aggrieved person who is a woman. Residence orders are passed to protect the aggrieved from the
dispossession, therefore, a breach of residence order could also be an offence under Section 31. With force of Rule 15(7), it would be safe to say that except the breach of maintenance order, breach of any other order should also be an offence under Section 31.

The offence shall as far as possible be tried by the magistrate who had passed the order and while framing charges under Section 31, the magistrate may also frame charges under Section 498-A of Indian Penal Code or any other provision of that Code or the Dowry Prohibition Act, 1961, as the case may be, if the facts disclose the commission of an offence under those provisions.

In the case of Mrs.Pramodini Vijay Fernandes Vs. Mr.Vijay Fernandes, Writ Petition No.5252 of 2009, decided on 17.02.2010, wherein the question was raised before the Hon'ble Bombay High Court as to "Whether the Family Court has jurisdiction to pass any order under Section 31 of the Act. The Hon'ble High Court held that, the words "Magistrate who had passed the order" in Section 31(2) must be read as Magistrate or a Civil or Criminal Court or a Family Court who had passed the order. It is further held that, therefore, the Family Court would have the jurisdiction under Section 31(2) of the Act, as the Magistrate which had passed the order of interim protection, to frame charges under Section 31(3) and to levy the penalty under Section 32(1) of the Act for breach of its protection order or interim protection order. It is also held that, the Family Court
would also have the jurisdiction to proceed under Order XXXIX Rule 2-A of the Code of Civil Procedure for breach and disobedience of its order and injunction.