

Domestic Violence Act 2005

Presented by-

Dr. (Mrs.) Shalini S. Phansalkar-Joshi
Judge, High Court, Bombay.

Domestic violence is
different from other
forms of violence.

Why?

D. V. INCLUDES

1) Physical

2) Sexual

3) Psychological

4) Emotional

5) Economic

Abuse of Women

- As per the Report published by U.N. Department of Public Information, titled as “Women at a Glance” 2015, World wide 20% to 50% of women experience some degree of domestic violence during marriage.
- As per National Crime Record Bureau, in India number of reported cases of domestic violence tripled between 2000 to 2015.

- As per World Health Organization Report 2015 violence against women causes more death and disability than various illnesses put together.
- A recent study by the International Center for Research on women found that 45% of the women interviewed had been abused by husband at some point in their life.
- Studies among poor rural women in India have shown that the extent domestic of violence could be as high as 76%.

- The study conducted by Tata Institute of Social Sciences reveals that they get two or three new cases of domestic violence cruelty every day.
- A recent study at J.J.Hospital revealed that 2/3rd of all women in the Casualty Ward may have suffered injuries from domestic violence and an alarming 16% of them had attempted suicide.
- Behind every reported case, there are thousand others suffering in silence.

- According to N.C.R.B. 2015 in India,
- Incidence of Dowry Death cases reported an increase of 15.2% over the previous year.
- Incidence of domestic violence/ cruelty cases reported an increase by 12.9% in the year 2015 over the previous year.

Aruna Pramod shah Vs. Union of India

WP(Cri.)425/2008, High Court of Delhi

In this case following grounds were raised to challenge the Constitutionality of the Act.

- That the gender-specific nature of the Act, by excluding men leads to arbitrariness & clearly violates Article 14 of the Constitution as the doctrine of reasonable classification does not apply in the absence of an intelligible differentia relating to the nexus.
- The court rejected the said contention by holding that the classification is reasonable & based on intelligible differentia & this differentia has complete relation to the purpose of achieving equality of status for women, therefore it does not impinge upon the equality doctrine under Article 14 of Constitution.

The court after making references to various international instruments which mandate the State to ensure protection to women in case of domestic violence clearly held that,

“the classification of women alone for the purpose of this Act is not *ultra vires* the Constitution of India, and the contention that it must be held so because it accords protection only to women and not to men is, therefore, wholly devoid of any merit. It was stated that while there are instances of men facing domestic violence, it cannot be denied that as a general phenomenon, it is women who are victims of violence in the family.”

- That the definition of “domestic relationship” contained in Section 2 (f) of the Act is objectionable. The petitioner contended that the placing of 'near or like marriage' status (relationships in the nature of marriage) at par with 'married' status leads to derogation of the rights of the legally wedded wife.
- The Court rejected the second contention and held that it sees no reason why equal treatment should not be accorded to wife as well as woman who has been living with a man as his common-law wife or even as a mistress. Like treatment to both does not, in any manner, derogate from the sanctity of marriage since an assumption can fairly be drawn that a “live-in relationship” is invariably initiated and perpetuated by the male. The Court also noted that the social stigma in such cases is usually faced by women although both partake of the relationship.

Whether the house owned by
mother-in-law can be called
as shared household?

S. R. Batra Vs. Smt. Taruna Batra

(2007) 3 S.C.C. 169

In this judgment, the Supreme Court interpreted the expression “shared household” under section 2(s) of the PWDVA and held that an aggrieved wife has the right to reside in the shared household, which was held to mean a house belonging to or taken on rent by husband, or house which belongs to joint family of which husband is a member. It was further held that, she has no such right of residence in a premises owned by her mother-in law exclusively merely because for some period she was permitted to stay in that house along with her husband.

Examining the contention of the respondent that “shared household” under the Act refers to household where she “lives or has lived” in the past, the court reasoned, that if the words were so interpreted, the results would be absurd in as much as a woman could claim dozens of places as being her shared household, such as her in-laws homes, her maternal home, homes of her aunts, uncles, nephews or sisters, on the sole ground that she had lived there as a visitor at some point of time. With regard to the relief of alternate accommodation claimed under Section 19 (1)(f), the Court held that the claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.

Smt. Shumita Didi Sandhu Vs. Mr. Sanjay Singh
Sandhu MANU/DE/8160/2007 Dt. 02-07-2007

It was held that,

“Legal position which emerges is that the husband has legal and moral obligation to provide residence to his wife. Therefore, wife can claim right of residence against her husband, it would certainly be treated as matrimonial home. Likewise, if the house in question belongs to HUF in which her husband is a coparcener, even that can be termed as matrimonial house. However, where the house belongs to parents-in-law in which husband has no right, title or interest and they had allowed their son along with daughter-in-law to stay in the said house, it would be a permissive possession by the daughter-in-law but would not give any right to her to stay in the said house.”

**Whether Magistrate can pass the
Order of breaking open the lock of
Respondent's house for
implementing the residence Order ?**

P. Babu Venkatesh, Kandayammal Vs. Rani
MANU/TN/0612/2008

Judicial Magistrate has ample power under Section 19(7) of the Act to give any order to the officer-in-charge to assist him in the implementation of the protection order. The interim residence order is one of the protection orders. Of course, the said provision does not specifically state that the learned Judicial Magistrate may direct the officer-in-charge to break open the lock. To give effect to the protection order passed ex-parte, the learned Judicial Magistrate will have to necessarily pass an order to break open the lock by the police. If the submission made on the side of the petitioners that the learned Judicial Magistrate is not empowered to give any order to break open the lock is accepted, then in all cases, the husband will lock the house and walk off and thereby depriving the wife from enjoying the protection order passed under the Act. The Court finds that the aforesaid submission is against the spirit of the object and scheme of the benevolent Special Act.

Whether it is obligatory to call for the report of Protection Officer before issuance of notice to respondent?

Amar Kumar Mahadevan Vs. Karthiyayini
MANU/TN/9632/2007

A reading of Section 12 of the Act does not warrant such an interpretation. Nowhere, it is provided in the Act that even for taking cognizance of the application filed by the aggrieved person, the receipt of the domestic incident report from the Protection Officer is a condition precedent.

Whether it is necessary for the
Magistrate to record verification of the
Applicant before issuing notice to the
respondent on her application?

Ajay Kant – V/s – Smt. Alka Sharma
2008 Cr. I.J. 264

It is held that,

“As per the provisions of Sections 12 and 2(q) of the Act, application under Sec. 12 can be filed only against the adult male persons.”

“The application under Section 12 is an application and not a complaint, therefore, recording of the statement, by the Magistrate, as provided under Sections 200 and 202 of Cr. P.C. before issuance of notice is not necessary.”

Ajay Kant – V/s – Smt. Alka Sharma
2008 Cr. I.J. 264

It was further held that,

“Neither it is obligatory on the Magistrate to call such report nor it is necessary that before issuance of the notice to the respondent, to consider such report. The words '**before passing any order**' provide that any final order on the application and not merely issuance of notice to the respondent.”

Whether it is necessary in each and every case to obtain report from Protection Officer or Service Provider to decide application for interim relief under Domestic Violence Act?

Nandkishor – V/s- Kavita

MANU/MAH/0957/2009

The question was whether it is necessary in each and every case to obtain report from Protection Officer or Service Provider to decide application for interim relief?

It was held that, “it is not necessary. If on the basis of the 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.”

It was held that, “procedural technicalities must not be allowed to act as a barrier to access to justice when the facts prima-facie establish right of the woman.

Whether in the absence of any separate application or specific prayer interim relief can be granted?

Vishal Damodhar Patil – V/s Vishaka Patil

2009 Cri. L.J. 107

Whether in absence of any specific prayer for interim relief and in absence of any separate application for interim relief, such relief can be granted?

It was held yes in view of Section 23, & Section 28 (2) of the Act which empowers the court to decide it's own procedure.

Whether female relatives of the husband can be made respondents u/s. 19 of the Act ?

Archana Hemant Naik – V/s- Urmilaben Naik.

Criminal Revision Application No. 590 of 2008.

Inclusion of female relatives within the definition of “Respondent” under Section 2 (q)

The Court upheld the maintainability of action under the PWDVA against female relatives of the husband or the male partner. The Court based its decision on the argument that the Proviso to Section 2(q) carves out an exception to the general provision that a Respondent can be only an adult male person. It provides that an aggrieved wife or female living in relationship in the nature of marriage may also file a complaint against any relative of the husband or the male partner. The Court observed. “It is important to note that the Proviso refers to a relative and not to a male relative.”

The Court specifically held that “if a narrow interpretation is put to proviso to Section 2 (q) to the effect that the relative referred to therein is only a male relative, the aforesaid proviso to sub-section (1) of Section 19 becomes meaningless.”

Sou. Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and Ors. MANU/SC/0081/2011.

Although S.2(q) defines Respondent to mean any adult male person. The proviso widens the scope of said definition to include female relatives also, when the complaint is filed by an aggrieved wife or female living in relationship in nature of marriage. Therefore, legislature never intended to exclude female relatives of husband or male partner from ambit of complaint that could be made under the Act by a wife or a female in living relationship.

What the expression 'reside' implies
under D.V. Act ?

Ramesh Mohanlal Bhutada v. State of Maharashtra 2011 All MR(CRI.) 2631

Expression 'reside' implies something more than a casual visit or a casual stay, but it implies some concrete intention to remain at particular place.

To prove this fact parties are required to be given opportunity of leading evidence.

When proceeding for maintenance and custody of the children is pending before the family court or civil court, whether the magistrate has jurisdiction to grant the similar relief under this Act?

A.V. Rojer – V/s- Janet Sudha MANU/TN/8493/2007

Applying Heydon's rule / Mischief rule/ Golden rule it was held that, the object of the legislature was to provide speedy remedy to the woman because as per the general common law remedy is time consuming and hence magistrate grant the similar relief though matter is pending in other court.

Thanseel S/o. Shafi – V/s- Sini D/o. Suhra Beevi MANU/KE/0123/2007

Whether magistrate is expected to decide any disputed question as preliminary issue?

It was held that,

One has to consider the entire question and decide the matter finally within the period of 60 days. Hence only in appropriate and exceptional cases he should decide the disputed question as preliminary issue.

D. Veluswamy v. D. Patchaiammal

S.C. 21-10-2010

The Court has defined “relationship in the nature of marriage” using the common law principles to the effect that:

- (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.

Sau. Manda R. Thaore w/o Sh. Ramaji
Ghanshyam Thaore v. Sh. Ramaji Ghanshyam
Thaore – Bombay High Court - Criminal Revision
Application No.317/2006

In this case Petitioner was residing with Respondent as his second wife as per his own admission. She has filed an application for maintenance u/s.125 of Cr. P. C. It was held that, that as Respondent has not obtained divorce from the first wife, her marriage was illegal and she is not entitled to maintenance u/s. 125 of Cr. P. C.

Sau. Manda R. Thaore w/o Sh. Ramaji
Ghanshyam Thaore v. Sh. Ramaji Ghanshyam
Thaore – Bombay High Court - Criminal Revision
Application No.317/2006

However, recognizing the vulnerability of the woman and the fact that the Court is unable to help in such unfortunate circumstances, it was suggested that this is an appropriate case for the Petitioner to take recourse to the PWDVA. It also awarded compensatory costs to her, explicitly stating that this would help her in pursuing proceedings under the PWDVA.

Kishor s/o Shrirampant Kale v. Sou. Shalini w/o
Kishor Kale – 2010(112) Bom.L.R. 1398

In this case the issue was whether an application filed 15 years after the party started residing separately could be maintainable, especially when there was no communication between them, it was held that the application is not maintainable considering the fact that she was already getting maintenance u/s. 125 of Cr. P. C.

Mrs. Savita Bhanot v. Lt. Col. V. D. Bhanot (2010) 158 PLR 1

Delhi High Court held that wife's application for residence order was maintainable even when as per allegation she was forced to leave her shared household in 2005, that is before the Act came into force. It was held that the date on which acts of domestic violence were committed has absolutely no bearing on the matter. The use of the words “is or has been living in a domestic relationship” in the definition of aggrieved person are clear to show that the parties need not have lived together on the date of coming into force of the Act in order to seek relief.

Mrs. Jovita Olga Ignesia Mascarenhas e Coutinho
v. Mr. Rajan Maria Coutinho. Criminal Writ Petition
No.30 of 2010 Bombay H.C. Goa Bench

It was held that although in cases of this nature where there are no pleadings, it would be desirable that the Court after hearing both the parties, framed the issues on the basis of the relief sought by the Petitioner so that each party can meet the case of the other. The High Court remanded the case for reconsideration.

A and B got married in 1993. A faced constant harassment and was finally driven out of the house in 2001. She lodged Domestic Violence Report in 2009 and claimed maintenance, compensation, etc. Husband claimed that all the incidents of alleged abuse are prior to 2005 and Domestic Violence Act cannot be given retrospective effect.

Maruti Dewaji Lande vs. Gangubai Maruti
Lande Cri. Writ Pet. No.542 of 2010 Nagpur
Bench Dated 9.8.2011

Court held – Marriage yet not dissolved. Denial of access to shared household took place prior to 2005 but it continued even thereafter. Depriving her of financial support and access to matrimonial home constitutes Domestic Violence. It is still continued. Giving relief to wife for continuous breach of legal right would not amount to giving retrospective effect.

Dr. Prakash Vinayak Joshi vs. Mrs. Anuradha Prakash Joshi.

Domestic Violence is not made an offence under the Act, except for the penal provision under S.31. That penal provision is attracted only if there is breach of Protection Order. The breach will arise only after Protection Order is passed after coming into force of the Act. Hence other Orders can be passed against the husband in respect of the acts of violence committed prior to coming into force of the Act and continued thereafter.

Dr. Prakash Vinayak Joshi vs. Mrs. Anuradha Prakash Joshi.

Sections 20 and 22 conferring monetary reliefs has prospective application in the sense that monetary relief can be granted as regards domestic violence occurring on or after 26th October 2006 as the concept of domestic violence is brought on Statute Book with effect from the said date. Order of maintenance under S.12 can be passed only from the date of the application.

Husband is proved to be addicted to alcohol. Wife files a application under Domestic Violence Act, seeking order for restraining him from entering into or residing in the house. Pass Order.

Mr. Ishpal Singh Kahai v. Mrs. Ramanjeet Kahai MANU/MH/0385/2011

Held – D.V. Act grants protection against any form of aggression, mental, physical or emotional in a shared household, which may not belong to a woman, but who only resides therein. Under S.19(b), the right to reside contains not only protection against dispossession but also removal from such house. She is entitled to protection of Human Rights against the violence. Hence Order of injunction can be granted the husband from entering into or residing in the matrimonial home.

Anita and Dilip residing together as husband and wife in the flat which was owned and standing in the name of Dilip's father. Due to domestic violence committed by Dilip, she files complaint u/s.498A against him and also files an application restraining Dilip from dispossessing her from the flat in which she was residing with him. Meanwhile Dilip's father dies and the flat was transferred in Dilip's mother, she being the nominee. Hence both Dilip and his mother oppose Anita's application for residence order.

Rajkumar Rampal Pandey v. Sarita
Rajkumar Pandey MANU/MH/1295/2008

Held – Mother is merely a nominee. She does not become a owner of the property. She holds property for the benefit of the other heirs. Dilip has undivided interest in the house after the death of his father. Therefore, Anita's claim for residence Order cannot be denied. Hence the Sale Deed executed by Dilip's mother in respect of the said flat cannot be called as legal and valid to deny the residence order.

PAVON