



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

CONCEPTUAL ANALYSIS OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

DHARANIDHARAN AMIRTHAVASAGAM¹

Judicial Officer in Tamil Nadu State Judicial Service

ABSTRACT

The aim and object of Domestic Violence Act can be gathered from the language used in preamble which says that "An Act to provide for more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto". The paper aims at understanding the nomenclature of "The Protection of Women From Domestic Violence Act, 2005 and the applications filed under various provision of this Act. The researcher will divide the research paper into four sections. The first section would be the Nomenclature and understanding the concept of "The Protection of Women". The second section would highlight the nature of the Act. Further the second section would focus on the important provisions of the Act and the powers conferred upon the Court dealing with the Domestic Violence cases. The third section would focus on the latest legal developments with respect to Domestic Violence Cases and the fourth and final section deals with the latest developments of the concept with the help of various judgments rendered by the Hon'ble High Courts and Hon'ble Supreme Court of India. The researcher aims to provide a clear picture on women empowerment because women were always been presumed to be inferior. The society made to believe that the females are mere "chattels". This research paper is an attempt to understand object of the Act.

Keywords: Nomenclature, Domestic Violence, Domestic Incident Report, Protection Order, Right to Choice.

I. NOMENCLATURE OF THE ACT

The Protection of Women from Domestic Violence Act, 2005 consists of 37 Sections. The Protection of Women from Domestic Violence Rules, 2006 consists of 17 Rules and 7 Forms (I to VII). One has to understand the nomenclature of the Act before going into the Act.

“The Protection of Woman from Domestic Violence”

The word “The Protection” is a legal protection guaranteed to a woman i.e. a Woman is entitled to all the legal protection and she has all rights to stand before the Hon’ble Court or the stakeholders available under the Act. The word “Woman” is defined under Indian Penal Code, 1860, but not under the Domestic Violence Act. As per Indian Penal Code, a female of any age is a woman.

a. What is a Domestic Violence?

It is defined under Section 2 (g) read with Section 3 of the Domestic Violence Act. The term “domestic violence” includes a broad range of violent acts committed by one member of a family or household against another. It often refers to the mistreatment of spouse and includes not only physical harm but also threats, verbal, psychological, and sexual abuses. In India, domestic violence is always believed to be inflicted upon women. If we break the words into, “Domestic” and “violence”, we can get a more clear definition regarding the kind of abuse. “Domestic” is personal realm or the household, home that a person uses for residing or as dwelling alone or with the family. In India, very less houses have the nuclear family setups and mostly the homes are the family homes where not only the spouse but the close relatives of the spouse also reside together. A woman in domestic relationship faces five kinds of abuses. The Acronym W(V)EEPS can be used to easily remember the kinds of abuses. They are Verbal abuse, Emotional abuse, Economic Abuse, Physical Abuse, and Sexual Abuse. Section 3 of the Domestic Violence Act should be read with Sec 18 which is the kingpin of the Act. The act of Domestic Violence usually take three contingencies i.e. when the woman was put into domestic violence or when the respondent is causing domestic violence or there is a likelihood that the respondent will cause a domestic violence. Before the application of this Act women had an option to approach the Court under Section 498A of the IPC. Although IPC never specifically used the term domestic violence and if a women approached the Court under this section, she would have to move out of her matrimonial house. There was no provision which allowed her to stay at her matrimonial house and raise her voice against such violences. These major problems forced the lawmakers to enact this legislation. Where acknowledgment of interdependence and mutualism prevail, there will be absence of Domestic Violence. The Domestic Violence Act protects the rights of a woman which have been guaranteed to them under Article 14² and 15³ of the Constitution of India.

2 Article 14 - Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

3 Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

A woman who can knock the doors of Justice is termed by the lawmakers as an “aggrieved person”. Section 2 (a) states, “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.

Sec 10 of IPC states “woman” denotes a female human being of any age. In particular with regard to Domestic Violence, a woman in a relationship of marriage can file, a woman in a live-in relationship in the nature of marriage can file, a natural daughter can file, an adopted daughter can file, a woman in a joint family setup can file as against the respondents.

II. NATURE OF THE ACT

I rely upon two Judgments to further substantiate that Domestic Violence Act is a “Civil Law.”

*In Re Indra Sarma Vs V.K.V. Sarma (2013) 15 SCC 755*⁴, Supreme Court, their Lordships Hon’ble Justice K.S. Radhakrishnan and Hon’ble Justice Pinaki Chandra Ghose in Paragraph 14 of the Judgment, had held that Domestic Violence is a “Civil Law.”

*In Re Vijayabhaskar Vs Suganya Devi, (2010) SCC Online Mad 5446*⁵, High Court of Madras, His Lordship Justice G. Rajasuria in Paragraph 12 has once again held that Domestic Violence Act is a “Civil Law.” “The term 'civil law' twice used therein is not an empty formality and that would exemplify and demonstrate, display and convey that the proceedings at the first instance should be civil in nature. The legislators were conscious of the fact that all of a sudden if criminal law is enforced on the husband and his relatives, certainly that might boomerang and have deliterious effect in the matrimonial relationship between the husband and wife. The object of the Act is that the victim lady should be enabled by law to live in the matrimonial family atmosphere in her husband/in-laws' house. It is not the intention of the said enactment to enable the lady to get snapped once and for all her relationship with her husband or the husband's family and for that, civil law and civil remedies are most efficacious and appropriate and keeping that in mind alone in the Act, the initiation of action is given the trappings of civil proceedings which the authorities including the Magistrate responsible to enforce the said Act should not loose sight of.”

To understand whether Domestic Violence Act is a Civil or Criminal Law, we should fall upon the Statement of Objects And Reasons Paragraph 2 and 3 which states “Where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A⁶ of the Indian Penal Code, the Civil Law does not however address the phenomenon in its entirety.

4 (2013) 15 SCC 755

5 (2010) SCC Online Mad 5446

6 Section 498A. Husband or relative of husband of a woman subjecting her to cruelty

a. Jurisdiction and Powers conferred upon the Court dealing with Domestic Violence Cases

What is the procedure that has to be adopted by the Magistrate who deals with the domestic violence cases? No doubt, Section 12 of the Domestic Violence Act, speaks about the Application to Magistrate. Any aggrieved person can file an application to the Magistrate. The parliamentarians have not used the word “complaint”, “Petition” or “Plaint”, instead they have used the word “Application.” This word application should not be confused with Sec 2 (d) of Cr. P. C. “Complaint.” Whenever an application is filed before the Judicial Magistrate Court, the husband used to file a discharge petition, which can at the outset dismissed because there is no question of charge being made against the husband. No punishment is ever provided for any of the abuses that the aggrieved person is undergoing as against the respondent. Where there is no framing of charges, there is no question of discharge. Sometimes petitions may be filed to drop the proceedings. As earlier as in the year 1991, the Hon’ble Supreme Court *In Re K.M. Mathew Vs State of Kerala* 1992 AIR 2206⁷, has laid down a preposition that there is no need for the Magistrate to have any powers or provisions to drop the proceedings. This was the settled position of law until 2004. In August 2004, *In Re Adalat Prasad Vs Rooplal Jindal and others*, a full Bench of the Hon’ble Supreme Court, has laid down that Magistrate has no power under Cr. P. C. to drop the proceedings and they have revisited the case in *K.M. Mathew Vs State of Kerala* and overruled it. *In Re Subramaniam Sethuramam Vs State of Maharashtra* in September 2004, their Lordships Hon’ble Justices N. Santosh Hegde, S.B.Sinha, Tarun Chatterjee have reaffirmed the Judgment of Adalat Prasad case. As on date, the Magistrate has no power to drop the proceedings.

In addition to Sec 12 of the Domestic Violence Act, 2005, the Rule 6 (5)⁸ of Domestic Violence Rules should be read with; the applications filed under Sec 12 of the Domestic Violence Act, 2005 has to be dealt in accordance with Sec 125 (3) of Cr. P. C.

b. Ex-Parte Reliefs

Ex-Parte and Interim Reliefs under Section 23 of the Act. The affidavit should be in form III and compliance of Rule 7⁹ of the Domestic Violence Rules, 2006. When an application is filed under Section 12 of the Act, reliefs were sought under Sec 17 for shared household and residence order under Sec 19. Sec 19 (f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

7 1992 AIR 2206

8 Rule 6 (5) – The application under Section 12 shall be dealt with and the orders enforced in the same manner laid down under Section 125 of the Code of Criminal Procedure 1973.

9 Rule 7 – Affidavit for obtaining ex-parte orders of Magistrate.

Provided that no order under clause (b) shall be passed against any person who is a woman.

In *Sameer Vidhyasagar Bharadwaj Vs Nandita Sameer Baradwaj (2018)*, Supreme Court, Her Lordship Hon'ble Justice Banumathi had held that "if the husband doesn't conduct himself properly, even if the house belongs to the husband, he can be ejected out in the interest of the wife.

In re S. R. Batra Vs Tarun Batra (2007) 3 SCC 169¹⁰, His Lordship Justice Markendaya Katju held that the concept of seeking residence in a shared household should be confined only to a place where husband should be the exclusive owner of it or husband should be the shared householder of it or husband should have taken it on rent or tenancy. In the absence of the above circumstances, the wife can seek for alternative accommodation.

The section 12 of the Act should be conjointly read with rule 6 (5) of Domestic Violence Rules 2006. The format of the Section 12 Application is given under Form 2. An application to the Magistrate can be filed by an aggrieved person, any person on behalf of the aggrieved person or the Protection Officers.

Section 2 (e) Domestic Incident Report means a report made in the prescribe form on receipt of a complaint of domestic violence from an aggrieved person.

Section 2 (n) Protection Officer means an officer appointed by the State Government under Sub-section (1) of Section 8.

Section 2 (o) Protection Order means an order made in terms of Section 18.

The Hon'ble Madras High Court in *Dr. M Patchirajan Vs The Protection Officer (2012)* Madras High Court, wherein His Lordship Justice Venugopal has laid down that Protection Order mandated under Section 12 is a directory aspect. The Provision of Sec 12 (1) which create a farce that the Protection Officer's Domestic Incidence report is mandatory. The Magistrate may consider the Domestic Incidence Report.

The first hearing date shall not ordinarily be beyond three days. The protection officer has to see to that the summons are served within a maximum period of two days. Section 2 (n), Section 8 and Section 9 of the Domestic Violence Act should be read along with Rule 8, 9 and 10 of the Domestic Violence Rules, 2006. As per Rule 5 (1)¹¹, the Domestic Incident Report will be in Form I. In case if the Protection Officer is unable to serve the summons on time, the Protection Officer can take the aid of Order V of CPC and Chapter VI of Cr P C. The legislature has felt that any person who is momentarily incharge of the place can receive the summons in the absence of the respondent and service is held sufficient.

¹⁰ (2007) 3 SCC 169

¹¹ Rule 5 – Domestic incident report – (1) 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.

As per section 25 (1) A protection Order made under Section 18 shall be in force till the aggrieved person applies for discharge. Rule 12 (4) states “When a protection Order is passed restraining the respondent from entering the shared household or the respondent is ordered to stay away or not to contact the petitioner, no action of the aggrieved person including an invitation by the aggrieved person shall be considered as waiving the restraint imposed on the respondent, by the order of the Court, unless such protection order is duly modified in accordance with the provisions of sub-section (2) of Section 25.

In re Arukaniammal Vs Gurusamy (1987) 2 MLJ 32¹², the Madras High Court, Hon’ble Justice M.N. Chandurkar, the then Chief Justice had held that, an Exparte Decree is a full decree on merits.

In re Srinivasalu and another Vs Krishnammal and another, (1987) 2 MLJ¹³, Madras High Court, His Lordship Justice M.N. Chandurkar had condemned the practice that Court should not adopt casual practice of setting aside Ex-parte decrees because Ex-parte decrees are also decree on merits.

Section 29 – There shall lie an appeal to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, as the case may be, whichever is later.

An ex-parte order passed by the Magistrate Court under Section 23, can be set aside in the same Court provided the respondent substantiate that it is a non-speaking order. If at all the petitioner woman aggrieved person could facilitate the Court that the Hon’ble Court has discussed my case in the absence of the Respondent and on application of the Judicial Mind relying upon all the averments and documents, then the respondent should only go to the appellate Court and he cannot challenge it in the Magistrate Court where the order was passed.

In Re Rajendran Vs Meenakshi (2018), Madras High Court, His Lordship Justice Anand Venkatesh has held that Sec 5 of the Limitation Act come into the aid of both the parties for moving before an appellate Court because Section 36 states Act not in derogation of any other law for time being in force.

If an order is passed by the Hon’ble Court, that if the order was not obeyed by the Respondent then the question of sentencing him to prison and the sentence of imposing cost on him comes as mandated under Sec 31 and 32. Sec 31 – A breach of Protection Order, or for 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.

12 (1987) 2 MLJ 32

13 (1987) 2 MLJ

III. JURISDICTION

An woman who feels that she is an aggrieved person as against the act of the Respondent can file it wherever she is; Section 27 of The Protection of Women from Domestic Violence Act, 2005 states about Jurisdiction:

- Wherever the petitioner is residing.
- Wherever the petitioner was residing.
- Wherever the Petitioner was permanently or temporarily residing
- Wherever the cause of action has arisen
- Wherever the petitioner is employed
- Wherever the petitioner is doing business

In nutshell, the petitioner's choice is total and absolute, she can file wherever she wants to file.

In re Rupali Devi Vs State of Uttar Pradesh 2019, Hon'ble Supreme Court, Their Lordships Hon'ble Mr. Justice L. Nageswara Rao and Hon'ble Mr. Justice Hemant Gupta magnanimously has settled the law in favour of the woman that a woman who has underwent cruelty both physical or mental under the hands of the Respondent or the relatives of the husband, can very well approach any Court.

Sec 179 of Cr P C speaks about ensuing the consequence.

Offence triable where act is done or consequence ensues. When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. No Court or police station should deprive of the benefit which is mandated under Section 179 of Cr P C. Now the settled position of the law is a woman who complains of either a domestic violence or cruelty under 498A, she can agitate in whichever place she resides and no technical plea of jurisdiction can be taken.

The most fascinating provision is Sec 27 (2) which states that "Any Order made under this Act shall be enforceable throughout India." In a Domestic Violence, a woman who has got an order in favor of her at Kanyakumari can straightaway take the Order to Jammu and Kashmir and can execute it with no difficulty. Sec 27 (2) is a novel feature.

a. Joint family setup and Live-in Relationship

To clarify the Joint family setup, the latest judgment of the Hon'ble Supreme Court *In Re Ajay Kumar Vs Lata @ Sharuti 2019 SCC Online SC 726*, His Lordship Hon'ble Justice Chandrachud held in this case that under Domestic Violence Act, the aggrieved woman falls under one of the five categories where she lives in a joint family setup and as a member of the joint family. She is entitled for maintenance and Ajay Kumar, the brother-in-law of the petitioner was directed to pay a sum of Rs. 30,000 as maintenance per month.

In Re Lata Singh Vs State of UP, 2006, AIR 2006 SC 2522¹⁴, His Lordship Justice Markandeya Katju held that “Any woman in India who has attained majority has got a right to live with anyone or to marry anybody.

In Re Velusamy Vs Patchaiammal (2010) 10 SCC 469¹⁵, Supreme Court, Hon’ble Justice Markandeya Katju had laid down certain classifications as to what is a live-in relationship and its categories. There are certain qualities that live-in relationship should be “in the nature of marriage.”

In Re Indira Sarma Vs V.K.V. Sharma, (2013) 15 SCC 755¹⁶, Supreme Court, the Hon’ble Justices has categorically stated that “having sex with the aggrieved person, is a strong indication that there was a live-in relationship. Managing the financial transactions of the house or in the reputation of the society both are living like husband and wife is said to be a live-in relationship.

In Re Nadhakumar Vs State of Kerala, 2018 SCC OnLine SC 492¹⁷, Their Lordship laid down that Parental sentiments cannot have any precedence or advantage over the constitutional morality.

His Lordship A. K. Sikri, J. also relied upon Hadiya case (*Shafin Jahan Vs Asokan K.M.*). Article 19 and Article 21 of the Constitution i.e. the Right to freedom and the Right to life were conjointly read and the Hon’ble Supreme Court have evolved a new concept called “Right to Choice” which is one of the facets of right to life.

In Re Lalitha Toppo Vs State of Jharkhand (2019) 13 SCC 796¹⁸, The Supreme Court had held that woman in a live-in Relationship is also entitled for maintenance.

IV. RETROSPECTIVE EFFECT

Whether Domestic Violence Act has retrospective effect or not?

The Retrospective effect was not stated anywhere in the Act. No doubt only criminal laws will have retrospective effect. As we have already stated, it is a civil law, naturally it will have both the retrospective and prospective effect. I am relying on following Judgments which will clarify that Domestic Violence Act, 2005 has got the retrospective effect to the effect of going back behind the law also.

In Re V.D. Bhanot Vs Savita Bhanot, (2012) 3 SCC 183, The Supreme Court had held that Domestic Violence Act is retrospective in nature, and the wife is entitled to all the reliefs even though the Act came after the commission of the Domestic Violence.

14 AIR 2006 SC 2522

15 (2010) 10 SCC 469

16 (2013) 15 SCC 755

17 2018 SCC OnLine SC 492

18 (2019) 13 SCC 796

*In Re Saraswati Vs Babu (2014) 3 SCC 712*¹⁹, Hon'ble Justice Mukopadhyaya, the Hon'ble Supreme Court has reiterated that the Domestic Violence Act has retrospective effect, woman can very well come to the Court for all the acts of domestic violence committed by the respondent and besides that the Hon'ble Lordship has granted a sum of Rs. 5,00,000/- as compensation as against the husband for disobedience of the orders of the Hon'ble Court.

*In Re Shalini Vs Kishore 2015 (3) RCR (Crl) 652(SC)*²⁰, Supreme Court, has held that the petitioner is very well protected under the Domestic Violence Act and she can very well institute a case against the respondent. Where the wife who is living separately 15 years away from the husband, with her uncle, still is entitled to maintenance from her husband under Section 20 of DV Act.

*In Re Javeria Abdul Majid Patni Vs Atif Iqbal Mansuri (2014) 10 SCC 736*²¹ Supreme Court, held that "No doubt Kula was obtained by the woman from the Mufti, it is only an advisory note (Fatwa), but she still continues to be a wife and entitled for all the reliefs.

In light of the all the judicial precedence, the Domestic Violence Act is Retrospective in nature.

*In Re Jeet Singh Vs State of UP, (1993) 1 SCC 325*²²

Their Lordships Hon'ble Justice K Singh, Justice V Ramaswamy, and Justice N Kasliwal has come heavily against Nyaya panchayats. Lordships have categorically held that after the inception of the Family Court Act 1984, no authority in India except for the Family Courts established under this Act has right to dissolve the marriage. A woman need not be carried away by the false divorces granted by the pseudo authorities other than Court. If a pseudo-divorce is granted by a false authority the women still has all the rights under Domestic Violence Act and she can very well knock the doors of Justice. These pseudo divorces will not bind her.

V. POWERS OF THE COURT

a. Interim custody

As per the Act only interim custody can be granted till the disposal of the case and total denial of visitation right in case if the Court feels that the respondent is injurious to the child's welfare. This is a fascinating aspect in Sec 21 of the Act.

19 (2014) 3 SCC 712

20 2015 (3) RCR (Crl) 652(SC)

21 (2014) 10 SCC 736

22 (1993) 1 SCC 325

b. Compensation Order

In Re S. Jagadeesan Vs State of Tamil Nadu, on 17th February 2015, the Hon'ble Justice Manikumar of the Madras High Court has granted four lakhs towards educational expenses of the child and laid down that if need so arises the Court can grant lumpsum interim compensation. Paragraph 120 of the Judgment - "Statutory provision empowers the Magistrate to pass suitable orders under Section 12 of the Act. All orders, that could be passed under Sections 18 to 22 of the Act, can be passed at the interim stage of any proceedings, which includes lumpsum payment also, under Section 23 of the Act, provided the Court is satisfied, what is just and proper."

c. Protection Order

In Re Vincent Shanthakumar Vs Christina Geetha Rani 2015(1) Air KAR R 834²³, Karnataka High Court, Dharwad Bench, Hon'ble Justice K. N. Phaneendra had held that "Any order passed by the Magistrate or by the Court for protecting the aggrieved person as against the domestic violence caused to her by the respondent is a Protection Order under Section 18.

In Re Sagar Sudhakar Shendge Vs Naina Sagar Shengde (2013), the Hon'ble Justice R. S. Dalvi of Bombay High Court held that for disobedience of protection order passed under the Domestic Violence Act, warrant can be passed by the Magistrate under Section 28 (2) of the Act. Warrant can be passed against the defaulted respondent. Sec 28 (2) Nothing in the Sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 or under Sub-Section (2) of Section 23.

d. Sec 125 (3) of Cr P C

- ✓ *In Re S.T. Prabhakar Vs The Secretary to the Govt of Tamil Nadu (2010)*, Hon'ble Justice Nagamuthu of Madras High Court
- ✓ *Jayachandran Vs Manjula Devi 2013*, Hon'ble Ms. Justice K.B.K.Vasuki of Madras High Court
- ✓ *In Re Muthuvel Vs Nalini 2015*, Hon'ble Ms. Justice Mrs. Vimala of Madras High Court
- ✓ *In Re M. Rajakumar @ Muthaiah Vs The Commissioner, Madurai City Police (2019)* The Hon'ble Justice Subbaiah and Justice Pugazhendi of Madras High Court

The sum and substance of all these judgments were whenever a Husband fails to pay the maintenance, the Court can provide two remedies, under 125 (3) of Cr P C. The Magistrate can issue two types of warrant. One is distress warrant issued under Form 18 of Cr P C and the other is Form 19 Distraint Warrant to enforce the order of maintenance under Section 128 or 125 (3), to attach a movable property either through the police or anybody. Future Salary can also be attached under Section 431 of Cr P C.

23 2015(1) Air KAR R 834

e. Guidelines for granting interim relief under Domestic violence Act

The Hon'ble Mr. Justice M.Venugopal of Madurai Bench of Madras High Court *In Re K.Rajendran Vs Ambikavathy* on 8 January, 2013 has provided guidelines for granting interim relief as follows:

The order passed under sub section (2) of the Domestic Violence Act would only be of Ad-interim in nature. In the light of the earlier findings the following guidelines could be laid to be followed by the trial Courts dealing with the applications filed under the Act.

- (i) Notice of the application filed under Section 12 of the Act shall be served as provided in Section 13, complying the procedure laid in Rule 12 of Protection of Women from Domestic Violence Rules.
- (ii) The notice is to be send in Form VII as prescribed under the Rules.
- (iii) The notice to be served on the respondent shall be accompanied by copy of application filed under section 12 and 23 if any.
- (iv) The Magistrate can pass interim order under section 23(1) ex-parte. But that ex-parte order could be passed only after service of notice as provided under Rule 12(3) of the Rules.
- (v) The Magistrate can pass an Ex-parte ad interim order without notice to the respondent, as provided under section 23(2).
- (vi) In case an Ex-parte ad interim order is passed without notice, or service of notice on the respondent, on his appearance, after granting an opportunity to the respondent to object the claim and on hearing the applicant and the respondent, a final interim order under section 23(1) is to be passed with or without modification of the ad-interim order.
- (vii) If on service of notice, the respondent fails to appear, Magistrate is to pass a final ex-parte interim order under section 23(1) with or without modification of the ad interim order.
- (viii) Magistrates shall bestow care and caution in granting ad interim ex-parte order under section 23(2). Such relief is to be granted only if urgent orders are warranted on the facts and circumstances of the case and delay would defeat the purpose or where an interim orders is absolutely necessary either to protect the aggrieved person or to prevent any domestic violence or to preserve the then existing position.

f. Whether Wife can claim Right of Residence in immovable property Belonging to relatives Of Husband?

In paragraph 29 of the judgment, this Court in *S.R. Batra Vs. Taruna Batra (supra)* held that wife is only entitled to claim a right to residence in a shared household and a shared household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.

VI. LATEST DEVELOPMENT OF LAW

a. Application Under Section 12 Of Domestic Violence Act Not Barred By Limitation Under Section 468 CrPC : Karnataka High Court

A single bench of Hon'ble Justice KS Mudagal said "When the application under Section 12 of the DV Act is not covered under the term 'offence', section 468 of Cr.P.C is inapplicable. Therefore the application of Section 468²⁴ of Cr.P.C. to an application under Section 12 of the DV Act is clearly a misconception." The court noted that Section 468 (1) and 468(2)(b)²⁵ of Cr.P.C. themselves show that the bar of limitation for taking cognizance is intertwined with an offence. Section 468 of Cr.P.C. comes into picture only if there is an offence. If there is no offence, there is no limitation. The Court said that under Section 12 of the DV Act, domestic violence is not called or treated as an offence. It speaks of court granting relief and not of conviction and sentence. The judgment said "To attract Section 468 of Cr.P.C, essentially the Act alleged must be an offence. Under the DV Act, the offence is not defined, as defined in Section 40 of IPC." Justice Mudagal opined "Section 12 of the DV Act is only an enabling provision to initiate enquiry to find out whether such act or omission is committed." Finally it concluded by saying "Section 31 of the DV Act makes it clear that only breach of the protection order or interim protection order etc. passed under Section 12 of the DV Act constitutes an offence and made punishable. Therefore it is clear that the act or omission contemplated under Section 31 of the DV Act is an offence and the application under Section 12 of the DV Act itself is not an offence."

b. Can Divorced Wife Claim Right To Residence Under Domestic Violence Act?

The Supreme Court in a recent judgment *Satish Chander Ahuja vs. Sneha Ahuja* held that a woman can claim right to residence in the houses owned by relatives as well. This means that, she can seek residence order with respect to property which belongs to in-laws, if she and her husband lived there with some permanency after marriage. What happens after divorce of a married couple? Can a woman file a domestic violence complaint after divorce? Can she seek residence order even after the marriage is dissolved? These are some of the doubts which have arisen after the Supreme Court delivered this judgment. As per the definition clause in the DV 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. Further, "domestic relationship" is defined to mean a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family. "Shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any

24 Section 468 Cr P C- Bar to taking cognizance after lapse of the period of limitation

25 Section 468 2 (b) Cr P C - one year, if the offence is punishable with imprisonment for a term not exceeding one year

right, title or interest in the shared household. This definition was interpreted in the Ahuja judgment by overruling restrictive interpretation in *SR Batra vs. Taruna Batra* (2007) 3 SCC 169.

Section 19 confers a woman the right to reside in a shared household. "Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same."

In *Juveria Abdul Majid Patni Vs. Atif Iqbal Mansoori* [2014(10) SCC 736]²⁶, the Supreme Court was examining the correctness of an order of Sessions Court which dismissed an application filed under the Domestic Violence Act as not maintainable. Examining the provisions of the Act, the court held that 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.

In the above judgment, the Court had also noticed its earlier decision in *Inderjit Singh Grewal Vs State of Punjab and another*, (2011) 12 SCC 588²⁷. In that case, the Supreme Court had held that "Application to Magistrate" under the Domestic Violence Act challenging a 'sham' divorce was not maintainable. The court had quashed the complaint filed by the wife.

In *Juveria*, the court said that the law laid down in *Inderjith* is not applicable for the purpose of determination of the issues involved in it.

In 2016, Justice Sunil Thomas of Kerala High Court, in *Bipin Vs Meera* [2016(5)KHC 367]²⁸, held that even a divorced wife is entitled to initiate proceedings under Sections 18, 19, 20, 21 and 22 of D.V Act to seek appropriate reliefs. "Any act of violence which satisfies the definition of Section 3 of the Act and has a rational nexus to the past matrimonial relationship, or which arises therefrom or as a sequel to that relationship should conceptually fall within the provisions of Domestic Violence Act".

In 2019, the Bombay High Court in *Sadhana Vs Hemant*, held that domestic violence complaint is not maintainable if there was no domestic relation on the date of filing of the complaint under the DV Act. In another case *Atmaram Vs Sangita*, the Court held that wife is entitled to reliefs under the Domestic Violence Act, if she continued to cohabit with her husband (ex) post-divorce.

c. Wife Entitled To Claim Right Of Residence Which Belongs To Relatives Of Husband Also: SC Overrules Its 2006 'SR Batra' Judgment

A wife is also entitled to claim a right to residence in a shared household belonging to relatives of the husband, the Supreme Court has held in an important judgment overruling the 2006 judgment in *S.R. Batra Vs Taruna Batra*. "In the event, shared household belongs to any relative of the husband with whom in a

26 [2014(10) SCC 736]

27 (2011) 12 SCC 588

28 [2016(5)KHC 367]

domestic relationship the woman has lived, the conditions mentioned in Section 2(s) are satisfied and the said house will become a shared household. The bench comprising Justices Ashok Bhushan, R. Subhash Reddy and MR Shah observed the definition of 'shared household' given in Section 2(s) of the Act cannot be read to mean that it can only be that household which is household of the joint family of which husband is a member or in which husband of the aggrieved person has a share.

In *S.R. Batra Vs Taruna Batra*, the Supreme Court bench of Justices SB Sinha and M.Katju had rejected the contention that the definition of shared household includes a household where the person aggrieved lives or at any stage had lived in a domestic relationship. It held that the wife is only entitled to claim a right to residence in a shared household, and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The court had further observed that claim for alternative accommodation can only be made against the husband and not against the husband's in-laws or other relatives.

In this case, *Satish Chander Ahuja* filed a Suit against his daughter in law (the sole-defendant) for mandatory and permanent injunction and also for recovery of damages/mesne profit. In the plaint, he pleaded that defendant has filed a complaint under the Protection of Women from Domestic Violence Act, 2005 in which interim order directing the plaintiff not to alienate and not to dispossess the defendant without order of the competent court has been passed. He further pleaded that the status of occupation of defendant as a daughter-in-law during subsistence of marriage with the son could be said to be permissive in nature and defendant is not entitled to claim a right of residence against the plaintiff, i.e., her father-in-law who has no obligation to maintain her during the lifetime of her husband. In the written statement, the daughter in law claimed that the suit property is a shared household as per provision of Section 2(s) of the Act, 2005, and thus she has right to stay/reside in the shared household. The trial court decreed the suit filed by Ahuja by allowing his application filed under Order XII Rule 6 CPC., taking note of the admission made by the defendant in her pleadings filed in the domestic violence case that the plaintiff to be the owner of the suit property. The High Court, while setting aside the Trial Court judgment, observed that question the suit could not have been simply decreed by the Trial Court on the basis of the title without weighing the effect of the statutory right in favour of the the daughter in law. The High Court, remanded the case back to Trial Court by issuing some directions.

The court observed that the right of occupation of matrimonial home, was not so far part of the statutory law in India until the Domestic Violence Act of 2005 was enacted. It said:

The progress of any society depends on its ability to protect and promote the rights of its women. Guaranteeing equal rights and privileges to women by the Constitution of India had marked the step towards the transformation of the status of the women in this country. The domestic violence in this country is rampant and several women encounter violence in some form or the other or almost every day, however, it is the least reported form of cruel behavior. A woman resigns her fate to the never ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner or a single woman in her lifetime. This non-retaliation by women coupled with the absence of laws addressing women's issues,

ignorance of the existing laws enacted for women and societal attitude makes the women vulnerable. The reason why most cases of domestic violence are never reported is due to the social stigma of the society and the attitude of the women themselves, where women are expected to be subservient, not just to their male counterparts but also to the male's relatives.

d. Rights Under Domestic Violence Act Can Be Claimed In Civil Courts

In Re Satish Chander Ahuja Vs Sneha Ahuja

In facts of the case, the court held that the claim of the defendant that suit property is shared household and she has right to reside in the house ought to have been considered by the Trial Court and non-consideration of the claim/defence is nothing but defeating the right, which is protected by Act, 2005. It said: "As per Section 26, any relief available under Sections 18, 19, 20, 21 and 22 of the Act, 2005 may also be sought in any legal proceeding, before a civil court, family court or a criminal court being the aggrieved person. Thus, the defendant is entitled to claim relief under Section 19 in suit, which has been filed by the plaintiff. Section 26 empowers the aggrieved person to claim above relief in Civil Courts also."

e. Divorced Wife Not Entitled To Right Of Residence Under Section 17 Domestic Violence Act: Kerala High Court: In Re Mr. Ramachandra Warrior Vs Jayasree

The Division Bench comprising Justices K. Vinod Chandran and MR Anitha held that the said right is available only to a woman in a domestic relationship. However, the court observed that a divorced wife occupying a shared household can be evicted only in accordance with law. The bench was considering a reference from a single bench which noticed a conflict between two single bench judgments *Sulaiman Kunju Vs Nabeesa Beevi [2015 (3) KHC 5]*²⁹ and *Bipin Vs Meera [2016(5)KHC 367]*. The conflict is with respect to the rights of a divorced woman to invoke the provisions of Protection of Women from Domestic Violence Act. The court also considered the question whether the order of residence obtained by a wife in a shared household would cease automatically on a divorce being granted subsequently.

(i) A divorced wife would not be entitled to the right of residence conferred under Section 17 under the Protection of Women from Domestic Violence Act, 2005, for reason of that right being available only to a woman in a domestic relationship.

(ii) A divorced wife would be included under the definition 'aggrieved person'. A divorced wife occupying a shared household can be evicted only in accordance with law. A divorced wife can approach the Magistrate's Court for an order under S.19 if she is residing in the shared household. The residence orders passed in such cases, would be subject to any proceeding for eviction in accordance with law, initiated by the husband, as contemplated under Section 17(2).

(iii) There can be no order to put a divorced woman in possession of a shared household, from where she had separated long back, and the relief can only be of restraining dispossession.

²⁹ [2015 (3) KHC 5]

A divorced wife who is continuing in the shared household at the time of divorce though entitled to seek for a residence order under Section 19, can continue only till she is evicted by due process of law.

f. Petition U/s 482 CrPC Seeking Quashing Of A Domestic Violence Application Not Maintainable: Madras High Court

The court observed that a petition under Article 227 of the Constitution may be maintainable if it is shown that the proceedings before the Magistrate suffer from a patent lack of jurisdiction. The Hon'ble Justice N. Anand Venkatesh observed thus while dismissing a batch of petitions filed under Section 482 CrPC seeking to quash a complaints filed under Section 12 of the Domestic Violence Act. The court, to hold thus, noted that, in *Kunapareddy Vs Kunapareddy Swarna Kumari, (2016) 11 SCC 774*³⁰, it was held that an application before a Magistrate for one or more reliefs under Chapter IV of the DV Act, are civil in nature, and are proceedings to vindicate the civil rights of an aggrieved person. "It is entirely true that the nomenclature of the petition is not decisive of the jurisdiction of the Court. Section 482, Cr.P.C merely saves the inherent power of the High Court to make such orders as may be necessary to a) give effect to an order under this Code; or b) prevent abuse of process of any Court; or c) otherwise secure the ends of justice. It is well settled that this section has not given any new power to the High Court but has merely preserved the power inherently possessed by every High Court as a superior Court of record. As a highest Court of Justice in the State, the High Court exercises a visitorial or supervisory jurisdiction over all Courts in the State. However, the plenitude of the inherent power under Section 482, Cr.P.C does not extend to annul proceedings which are not before a Criminal Court. As pointed out supra, to constitute a criminal court, it is not sufficient that the Court is one of the Courts enumerated under Section 6 Cr.P.C, it is also necessary that the proceedings before it are criminal in character. If the proceeding before the Court is civil in nature, then it cannot be said that the Court is a Criminal Court exercising criminal jurisdiction for the purposes of Section 482, Cr.P.C." The court noted that in several cases under DV Act, Magistrates mechanically follow the drill of the procedure set out in Sections 190(1)(a), 200 to 204, Cr.P.C and issue summons as if the respondents before it are accused of offences. *The Hon'ble Justice, therefore, issued the following directives, for the proper disposal of applications under Section 12 of the D.V Act:*

1. An application under Section 12 of the D.V. Act, is not a complaint under Section 2(d) of the Cr.P.C. Consequently, the procedure set out in Section 190(1)(a) & 200 to 204, Cr.P.C as regards cases instituted on a complaint has no application to a proceeding under the D.V Act.
2. An application under Section 12 of the Act shall be as set out in Form II of the D.V Rules, 2006, or as nearly as possible thereto. In case interim ex-parte orders are sought for by the aggrieved person under Section 23(2) of the Act, an affidavit, as contemplated under Form III, shall be sworn to.
3. The Magistrate shall not issue a summon under Section 61, Cr.P.C to a respondent(s) in a proceeding under Chapter IV of the D.V Act. Instead, the Magistrate shall issue a notice for appearance which shall be as set out in Form VII appended to the D.V Rules, 2006. Service of such notice shall be in the manner

³⁰ (2016) 11 SCC 774

prescribed under Section 13 of the Act and Rule 12 (2) of the D.V Rules, and shall be accompanied by a copy of the petition and affidavit, if any.

4. Personal appearance of the respondent(s) shall not be ordinarily insisted upon, if the parties are effectively represented through a counsel. Form VII of the D.V Rules, 2006, makes it clear that the parties can appear before the Magistrate either in person or through a duly authorized counsel. In all cases, the personal appearance of relatives and 52 other third parties to the domestic relationship shall be insisted only upon compelling reasons being shown. (*Siladitya Basak Vs State of West Bengal (2009 SCC Online Cal 1903)*).

5. If the respondent(s) does not appear either in person or through a counsel in answer to a notice under Section 13, the Magistrate may proceed to determine the application ex parte.

6. It is not mandatory for the Magistrate to issue notices to all parties arrayed as respondents in an application under Section 12 of the Act. There should be some application of mind on the part of the Magistrate in deciding the respondents upon whom notices should be issued.

7. As there is no issuance of process as contemplated under Section 204, Cr.P.C in a proceeding under the D.V Act, the principle laid down in *Adalat Prasad Vs Rooplal Jindal (2004 7 SCC 338)*³¹ that a process, under Section 204, Cr.P.C, once issued cannot be reviewed or recalled, will not apply to a proceeding under the D.V Act.

8. Similarly, any party aggrieved may also take recourse to Section 25 which expressly authorises the Magistrate to alter, modify or revoke any order under the Act upon showing change of circumstances.

9. In *Kunapareddy* (cited supra), the Hon'ble Supreme Court upheld the order of a Magistrate purportedly exercising powers under Order VI, Rule 17 of The Code of Civil Procedure, 1908, to permit the amendment of an application under Section 12 of the D.V Act.

10. The Magistrates must take note that the practice of mechanically issuing notices to the respondents named in the application has been deprecated by this Court nearly a decade ago in *Vijaya Baskar* (cited supra). Precedents are meant to be followed and not forgotten, and the Magistrates would, therefore, do well to examine the applications at the threshold and confine the inquiry only to those persons whose presence before it is proper and necessary for the grant of reliefs under Chapter IV of the D.V Act.

11. In *Satish Chandra Ahuja* (cited supra), the Hon'ble Supreme Court has pointed out the importance of the enabling provisions under Section 26 of the D.V Act to avoid multiplicity of proceedings. Hence, the reliefs under Chapter IV of the D.V can also be claimed in a pending proceeding before a civil, criminal or family court as a counter claim.

31 (2004 7 SCC 338)

12. While recording evidence, the Magistrate may resort to chief examination of the witnesses to be furnished by affidavit (*Lakshman Vs Sangeetha, 2009 3 MWN (Cri) 257*)³². The Magistrate shall generally follow the procedure set out in Section 254, Cr.P.C while recording evidence.

13. Section 28(2) of the Act is an enabling provision permitting the Magistrate to deviate from the procedure prescribed under Section 28(1), if the facts and circumstances of the case warrants such a course, keeping in mind that in the realm of procedure, everything is taken to be permitted unless prohibited (*Muhammad Sulaiman Khan Vs Muhammad Yar Khan, 1888 11 ILR All 267*)³³.

CONCLUSION

It should be borne in mind that helpless and hapless "aggrieved person" under the 2005 Act approaches the Court under the compelling circumstances. It is the duty of the Court to scrutinize the facts from all angles whether a plea advanced by the Respondent to nullify the grievance of the aggrieved person is really legally sound and correct. The principle "*justice to the cause is equivalent to the salt of ocean*" should be kept in mind. The court of law is bound to uphold the truth which sparkles when justice is done. Before throwing a petition at the threshold, it is obligatory to see that the person aggrieved under such a legislation is not faced with a situation of non-adjudication, for the 2005 Act as we have stated is a beneficial as well as assertively affirmative enactment for the realization of the constitutional rights of women and to ensure that they do not become victims of any kind of domestic violence. The Act aimed at providing a simplified procedure to all the women who faces domestic violence access to civil remedies, and it has succeeded in doing so, to a large extent.

32 2009 3 MWN (Cri) 257)

33 (1888 11 ILR All 267)