



Protection of Woman from Domestic violence: A Civil Remedy or Criminal Offence-An Analysis.

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Introduction.

The Maxim “yatra naryastupujyanteramanthetatradevatha” reflects the cherished tradition of our Country, but it is not being practiced by society at large and women are subjected to many forms of harassment and cruelty in the modern society, while subject matter herein is regarding Domestic Violence- a woman suffer in her marital home at the hands of her husband and his relatives .In 1983 Domestic violence was recognized as a specific criminal offence by including section 498A.¹ [Husband or relative of husband of a woman subjecting her to cruelty.] in Indian Penal Code. This section deals with cruelty by husband or a relative of husband towards a married woman. The Acts of cruelty which fall under explanation (a) cruelty and (b) harassment of section 498A of IPC are made cognizable offences.² The introduction of Section 498A did not either reduced or mitigated the domestic violence against women but it is continuing unabated making life of married woman miasmatic. To contain the Acts of domestic violence and to give protection to woman from domestic violence a new legislation by the title “The Protection of Woman from Domestic Violence Act 2005 “was passed by Parliament on 24/08/2005 which received assent of the President on 13/09/2005.

Object of the Act.

The social malady of domestic violence in India is widely prevalent but due to its proximal perpetuation of domestic violence by husband and his relatives on wife, behind closed doors, it remained invisible in public domain. In existent circumstances any Act of cruelty by husband or his relatives on his wife is treated as an offence under section 498A of IPC.³ However, there was a hiatus to provide a civil remedy to suffering women or victims to sustain them in their hour of travail due to domestic violence. The Protection of Women from Domestic Violence Act was brought to provide a remedy in civil law for protection of women from being victims

¹Lawman’s Protection of Women from Domestic Violence Act, 2005, Kamal Publishers, New Delhi, 2017.

² Mohanakumar, V. N. (2013). Indian Domestic Violence Law with Reference to Section 498A IPC. *Rajagiri Journal of Social Development*, 5(1).

³ Ray, S. (2006). Legal constructions of domestic violence. *Sociological bulletin*, 55(3), 427-448.

of domestic violence keeping in view the rights guaranteed under Articles 14,15 and 21 of the Constitution of India and to prevent the occurrence of domestic violence.⁴

The Act provides for the following objects:

- 1) The Act defines the expression of Domestic violence to include Actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands from the wife or her relatives. Even though demand of dowry is an offence under the Dowry Prohibition Act,1961. Section 3 of the PWDV Act defines the meaning of domestic violence which is inclusive in nature.
- 2) The Act covers the women who are or have been in relationship with the abuser where both parties have lived together in a shared house hold and related by consanguinity, marriage or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.
- 3) The Act provides for rights of women, to secure housing, and to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or house hold. Right to reside is secured by Residence order which is passed by Magistrate.
- 4) It empowers Magistrate to pass protection orders in favour of the aggrieved person and against the respondent from committing any Act in any form any place against the aggrieved person.
- 5) It provides for appointment of Protection Officer and non-governmental organizations as service providers to assist the aggrieved persons-medical aid, legal aid sheltered.

Reliefs provided under the Act:

The reliefs claimed by aggrieved person wife under PWDV ACT are all civil in nature and no offence is created under this Act except offence under section 31 of the said Act for breach of protection order passed by the Magistrate by the respondent. Under section 33 of the said Act protection officer is liable for offence of not discharging the duties of the protection under the Act.⁵ This Act does not create any new offence under it or within the meaning of IPC. The Supreme Court, in Indira Sarma Vs V.K.V.Sarma,⁶ held that “*The D.V. Act has been enacted to provide a remedy in Civil Law for protection of women from being victims of domestic violence and to prevent occurrence of domestic violence in the society. The DV Act has been enacted also to provide an effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family.....*”

- a) It may be seen that Section 17 of Protection of Woman from Domestic Violence Act 2005 provides to every woman in a domestic relationship the Right to Residence in the shared household whether or not she (victim /wife) has any right, title or beneficial interest in the said residence and the victim woman or aggrieved person cannot be evicted except in accordance with law.

⁴ Kalyani, P. V. (2013). Protection of Women from Domestic Violence Act, 2005: A Critical Appraisal. *IUP Law Review*, 3(2).

⁵ Das, P. K. (2011). *Protection of Women from Domestic Violence*. Universal Law Publishing.

⁶ (2013) 15 SCC 755

b) Whereas Section 18 of Protection of Woman from Domestic Violence Act 2005 provides to the aggrieved person a right to get a protection order from the Magistrate and against the respondent, prohibiting the respondent not to commit any acts enumerated under section 18 (a) to (g).

c) Whereas Section 19 creates residence order in favour of the aggrieved person or wife restraining the respondent from dispossessing the aggrieved person or wife or disturbing the possession of the aggrieved person from the shared household. Further the Magistrate can pass order under section 19(b) to (f) to protect the aggrieved person.

d) Whereas Section 20 provides for giving monetary relief to the aggrieved person towards meeting expenses incurred and losses suffered by the aggrieved person due to domestic violence against him or as maintenance. The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

e) Whereas Section 21 empowers the Magistrate to pass custody orders on application being made by the aggrieved person for custody of child or children. The custody order is temporary in nature and subject to further orders of the Magistrate.

f) Whereas Section 22 empowers the Magistrate, on application being filed by the aggrieved person to grant compensation and damages for the injuries caused by the Acts of domestic violence committed by the respondent.

The above reliefs provided by sections 17 to 22 of the Act can be sought by the aggrieved person and the Magistrate can pass such order to protect women from domestic violence.⁷ A reading of the above sections reveal that they are reliefs of civil nature and the Magistrates are empowered to grant those reliefs after being prima-facie satisfied. So these remedies are purely civil in nature and it is important to note that none of the several forms of the domestic violence committed by the respondents under these sections is referred to as an offence and respondents as offenders. It is only when an order is passed by Magistrate under any of the aforesaid sections i.e. Sections 17 to 22 and it is breached by the respondent then a breach of such order is referred as an offence and respondents as offenders under section 31 of the Act and same is categorized as cognizable and non bailable under section 32 of the ACT.

Having analyzed the nature of reliefs under DVACT as civil in nature what remains to be seen is whether or not the enquiry by the Magistrate in applications filed under Section 12 of the PWDV Act for relief under sections 17 to 22 is akin to criminal trial of Criminal case.⁸ The procedure of criminal trial is not adopted by the Magistrate in DV CASES as section 28 (2) of the PWDV ACT gives flexibility to Magistrate to adopt or laying down its own Procedure for disposal of an application under section 12 of the PWDV Act. Under section 13 of PWDVACT notice of date of hearing of application under section 12 of PWDVACT shall be given to Protection

⁷ Kadam, S. S., & Chaudhari, V. A. (2011). Domestic Violence against Woman: Past, Present, Future. *Journal of Indian Academy of Forensic Medicine*, 33(3), 261-266.

⁸ Moulick, J., Pradhan, T., & Sarkar, P. K. (2019). THE DYNAMICS OF COUNSELLING AS A VICTIM MANAGEMENT STRATEGY IN CASES OF DOMESTIC VIOLENCE IN INDIA. *Humanities & Social Sciences Reviews*, 7(6), 1090-1111.

Officer for serving on the respondent. No warrant is issued by the Magistrate in the first instance to secure the presence of the respondent. If the respondents fail to appear after receiving notice and fails to file their counter if any, the Magistrate without taking coercive steps treat them as non-contesting respondents and pass an expert order under section 23 of PWDV Act, as such power is given to Magistrate under the said section. During enquiry under section 12 of PWDVACT and till an order is passed under section 18 to 23, the Magistrate may not insist for appearance of respondent on all hearing days. However, in exceptional cases, the Magistrate is not precluded from issuing warrants for securing presence of the respondent.⁹

The provisions of the PWDVACT at first look give a feeling that the nature of the reliefs read with sections 31 to 34 are criminal offences dealt under criminal procedure code but when examined keenly reliefs are civil in nature. This aspect is aptly described in allegorical terms by Hon'ble Justice Durga Prasad of Andhra Pradesh High Court in his judgment reported in *Giduthuri Kesari Kumar VS State of Telangana*.¹⁰ His lordship held that "therefore, it is clear that the proceedings conducted till passing of the orders under section 18 to 22 are only civil in nature to provide a civil remedy. Thus it is a civil comfit packed with a criminal Wrapper."

While in some domestic violence cases, when the notices were issued by the Magistrate to protection officers to be served on the respondents and when protection officers served the said notices on the respondents directing them to appear before Magistrate court, those notices were sought to be quashed by the respondents before Hon'ble High Court under Section 482 Of Criminal Procedure Code by filing criminal petitions on various grounds but as the nature of the reliefs under PWDVACT are civil in nature, the High court refused to quash the Criminal petitions under section 482 of Criminal Procedure code and held that quash petitions under section 482 of Criminal Procedure Code are not maintainable and dismissed the petitions on the ground that enquiry before Magistrate is civil in nature.¹¹

The leading case on this point is reported in *Giduthuri Kesari Kuma VS State of Telangana*¹² where in a single judge of High Court of Telangana in a batch of criminal petitions seeking to quash the proceedings in respect of Domestic violence cases dismissed all the petitions on the ground that the relief in PWDV case is civil in nature and respondents can appear in the enquiry and establish their non-involvement in the matters. However, in exceptional matter based on the facts, where there is no domestic relation but respondents are roped in to appear before Magistrate they can seek abashment of the domestic violence cases.

It is pertinent to mention that the Kerala High Court in *Sudhannya K.N v. Umasanker Valsan and Venugopalan v. Jayasree V. Nair* discussed the legislative intent behind Section 26 of the Act and held that the DV Act guarantees larger rights in favour of the woman by giving her the option to approach either the Family Court or the Magistrate at her convenience.

⁹ Amien, W. (1998). Recent developments in the area of women's rights in South Africa: focus on domestic violence and femicide. *Women*,(3), 1-13.

¹⁰ ALD (CR) 2015(2) 470

¹¹ Giliyal, A. (2013). *Corporal Punishment in India: A Primer*. National Law University Delhi.

¹² ALD(CR)2015(2)470

It may be stated further that the High Court of Tamil Nadu delivered two conflicting judgments in respect of nature of case in the matter of domestic violence Act.

Justice N. Anand Venkatesh had taken a view that cases filed under the said Act are civil in nature and hence cannot be heard by a Magistrate court as criminal case. While in another case, Justice S M Subramaniam took a view that cases under domestic violence act are to be treated as criminal matters and should be heard by criminal courts. At present the matter is referred to a larger bench and it is pending.¹³

Conclusion:

The present status of an application under section 12 of PWDVA before Magistrate is creating confusion in the minds of petitioners and respondents and advocates due to civil reliefs being granted by criminal court. This status of confusion requires to be put at rest by proper amendment of the PWDV ACT for the benefit of the parties and advocate community. While providing the much needed remedy to victims of domestic violence the forum of obtaining it is not properly provided by the Act. If the remedy is of civil nature, there is no requirement to entrust the adjudication to a criminal court. A simple remedy before proper forum through a simple process is need of the hour.



¹³ Nigam, S. (2021). *Domestic Violence Law in India: Myth and Misogyny*. Routledge India.