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LAWYERS COLLECTIVE WOMEN'S RIGHTS INITIATIVE

**PROTECTION OF WOMEN FROM
DOMESTIC VIOLENCE ACT 2005**

Supported by UN Trust Fund to End
Violence Against Women / UNIFEM

Why a separate law on Domestic Violence? The Rationale

- ❖ Till 2005, remedies in form of civil law (divorce) & criminal law (s. 498A IPC)
- ❖ No definition of domestic violence, no civil law dealing with DV.
- ❖ Need for immediate & emergency relief
- ❖ No express recognition of domestic violence
- ❖ Other non-matrimonial relationships not covered by existing laws (e.g. between parents & children, brothers & sisters etc.

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- ❖ Intended specifically to protect women (children both male & female). Covers mothers, daughters, sisters, widows, relations through adoption etc.
- ❖ Recognition to “**relationships in the nature of marriage**” – victims of bigamous/ fraudulent marriages, relationships of cohabitation.
- ❖ Mix of both civil & criminal laws – **Two stage process** –
 1. **Civil orders passed by Magistrate on Application under S. 12**
 2. **On breach of civil orders by the perpetrator, arrest (imprisonment & / or fine)**

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Key Features of PWDVA 2005

- ❖ **Definition of DV** based on UN Framework for Model Legislation on Domestic Violence & UN Declaration on Elimination of Violence Against Women (GA Res. 48/104 of 1993)
- ❖ Unambiguous recognition of the woman's **right to live free from violence**. Provides immediate relief to victims in cases of emergency
- ❖ The **right to reside in shared household** – recognizes inequality within the home
- ❖ Ensures **effective access to justice** – introduces new authorities & mechanisms (PO as the interface between the woman and the court)

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Coverage – Who can Complain : "Aggrieved Person" [Section 2(a)]

- ❖ Any woman **who is or has been in a domestic relationship** with the respondent (*sisters, widows, mothers, daughters, women in relationships of cohabitation, victims of bigamous marriages, single women etc.*) and
- ❖ Who has been subjected to acts of domestic violence
- ❖ Children are also covered. Any person can file a complaint on their behalf

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Against Whom Can A Complaint be Filed : “Respondent” [Section 2 (q)]

- ❖ Any **adult male member** who has been in a domestic relationship with the woman who files a complaint of domestic violence.
- ❖ Relatives of the husband or the male partner.
 - ◆ Includes both male and female relatives of husband or the male partner.

What is a “Shared Household” [Section 2(s)]

- ❖ A household where the aggrieved person **lives / has lived in a domestic relationship**, either singly or along with the respondent
- ❖ Includes a household
 - ◆ Whether *owned or tenanted* either jointly by the person aggrieved and the respondent, or by either of them,
 - ◆ Where either the person aggrieved or the respondent or both jointly or singly have any *right, title, interest or equity*
 - ◆ Includes such a household which *may belong to the joint family* of which the respondent is a member, irrespective of whether the respondent or person aggrieved has any right, title or interest in the shared household

What is a “Domestic Relationship” [Section 2(g)]

- ❖ Relationship between two persons **who live or have, at any point of time, lived together** in the shared household
- ❖ Includes relations of consanguinity, marriage, or through **relationships in the nature of marriage**, adoption, or joint family;

Note :

1. *Domestic relationships are not restricted to the marital context*
2. *Domestic relationships are meant to cover sisters, widows, mothers, daughters, women in relationships of cohabitation, single women etc.*
3. *Domestic relationships also protect women of fraudulent or bigamous marriages or in marriages invalid in law*

Definition of Domestic Violence (Section 3)

- ❖ Any form of abuse causing **harm or injury** to the physical and / or mental health of the woman or compromising her life and safety
- ❖ Any harassment for **dowry** or to meet any other unlawful demand.
- ❖ **Threat** to cause injury or harm.
- ❖ The **overall facts & circumstances** of the case must be considered by the court

Kinds of Abuse : Physical and Sexual Abuse

❖ Physical Abuse

- (i) any act or conduct that **causes bodily injury or hurt**
- (ii) includes assault, criminal intimidation and criminal force.
E.g : Beating, Kicking, Punching etc.

❖ Sexual Abuse

- (i) any humiliating or degrading sexual act

Note :

Cases where a woman has been forced into sexual intercourse by her husband, against her will, also covered

The Right to Reside (Section 17)

- ❖ 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.**
- ❖ An aggrieved woman shall have a **right not to be evicted or excluded** from the shared household or any part of it by the respondent *save in accordance with the procedure established by law.*

Verbal & Emotional Abuse and Economic Abuse

❖ Verbal and Emotional Abuse

- (i) insults, ridicule and threat causing harm or injury.
E.g : name calling, ostracizing, blaming a woman for not having a male child etc.

❖ Economic Abuse

- (i) Deprivation of the basic economic or financial necessities of life and entitlements that causes injury or harm.
- (ii) Including prohibiting/restricting **access to the shared household**
E.g : denial of food, disposing off household assets to the detriment of the woman, disposing off her own assets (such as **Stridhan**) against her will etc.

Provisions for Relief (Sections 18 – 23)

- ❖ Protection Orders
- ❖ Residence Orders
- ❖ Monetary relief
- ❖ Custody Order
- ❖ Compensation Order
- ❖ Interim/ Ex parte Orders

Protection Orders Can be Claimed Preventing the Respondent from :

- ❖ **Committing, aiding or abetting** any act of DV or any other act specified in the order;
- ❖ **Entering the place of employment** or any other place frequented by the person aggrieved;
- ❖ **Attempting to communicate** with the person aggrieved, including personal, oral or written, electronic or telephonic contact;

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Residence Orders Can be Passed by Court Directing the Respondent to :

- ❖ **Restrain from disturbing possession** of the aggrieved person from the shared household, or from entering any portion of the shared household in which the aggrieved person resides;
- ❖ Direct the **Respondent to remove himself** from the shared household; (*This order cannot be passed against a woman*)
- ❖ Restrain the respondent **from alienating/disposing off/ encumbering** the shared household or from renouncing his rights in the shared household (except with the leave of the court);
- ❖ Direct the respondent to **secure alternate accommodation** for the person aggrieved. (where she so desires).

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- ❖ **Alienating assets**, operating bank lockers or bank accounts used/held/enjoyed by both parties, **including her stridhan**; (except with the leave of the court)
- ❖ **Causing violence** to dependants, other relatives & persons who give the person aggrieved assistance from domestic violence.

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Other Reliefs

- ❖ **Monetary Relief** to meet expenses incurred and losses suffered, including maintenance, medical expenses etc
- ❖ **Temporary Custody** of any child (Best Interest of child principle)
- ❖ **Compensation** and damages for injuries caused by acts of domestic violence committed by the respondent (mental injury)
- ❖ **Interim & Ex parte Orders** on the satisfaction of Magistrate

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Procedure under the PWDVA

❖ **Stage I : Information of Incident of DV**

Information by Any Person (Section 4) - Must be reduced into writing

- ♦ **To the Protection Officer, or**
- ♦ **To the Police**

Note :

A woman or any person on her behalf can give information of domestic violence to the PO or to the Police. If information is given by any person other than the woman, he/she must sign the information provided.

Note :

Domestic Incident Report (DIR) given in **Form I** of the Rules

A woman can use this law without appointment of POs (directly thru Police & Magistrate)

Procedure Contd.

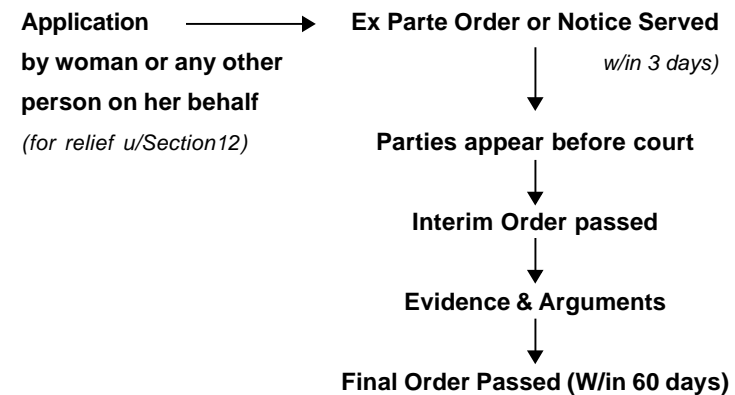
❖ **Stage II : Complaint**

Aggrieved Person to lodge complaint :

- ♦ Directly with the Magistrate. This can be done even if POs have not been appointed
- ♦ Directly with the Police. Police will record it as DIR & forward it to PO & Magistrate
- ♦ With the Protection Officer. PO will record it as DIR & forward it to Magistrate
- ♦ With the Service Provider. Will record it as DIR & forward it to PO & Magistrate

Procedure Contd.

❖ **Stage III : Proceedings in Court**



Note :

1. Magistrate can also direct parties to undergo **Counseling** at any stage of proceedings. If counseling leads to settlement, final order passed by court on terms of settlement.
2. Court can also seek **assistance of Welfare Expert** at any stage of proceedings.

❖ **Alteration/Modification/Revocation of Order [Section 25(2)]**

- ♦ Either parties can ask for alteration / modification / revocation of orders. This order must be in writing & on *satisfaction of Magistrate that there is a change in circumstances.*

Procedure Contd.

❖ **Stage IV : Post-Order Proceedings**

From Final Order :

- ❖ There could be an Appeal by either parties - before Sessions Court w/in 30 days (Section 29)
- ❖ Application for Discharge/Alteration (Section 25)
- ❖ **Discharge of the Order [Section 25(1)]**
 - ♦ Protection order to continue till its discharge. An application asking for discharge only by woman. A woman may apply for a discharge if she has settled her case. **[Following Procedure for Counseling: Rule 14]**

Consequences of the Breach of Protection Order (Section 31)

- ❖ Breach of a Protection Order passed is deemed to be a **punishable offence.**
- ❖ Charges under Section 498A IPC can also be framed by the Magistrate in addition to the charges under this Act.
- ❖ Offences are **non-bailable and cognizable.**
- ❖ Punishment may extend to one year imprisonment and /or a maximum fine of Rs 20,000/-.

Act in Addition to Existing Laws

- ❖ PWDVA is in **addition to existing laws (Section 36)**. Hence, an aggrieved person can continue to use the existing provisions of law (offences under IPC & other laws)
- ❖ An aggrieved person has the **right to file a complaint simultaneously under Section 498A IPC (Section 5)**
- ❖ **Reliefs under PWDVA can be asked for in other legal proceedings (Section 26)**. E.g. petition for divorce, maintenance, Section 498A IPC petitions.
- ❖ An application can be filed in a pending proceeding for a residence order according to the Rules of the court in which the case is pending.

Best Practices :

- ♦ Full time POs to be appointed
- ♦ Number of POs to be appointed to depend on size, population & accessibility
- ♦ Must be sensitive to needs of the woman & ability to coordinate with court also important.
- ♦ Training & sensitization of POs essential

Mechanisms for Implementation [Protection Officer (PO) – Appointment under Rule 3]

- ❖ To be appointed by state govt. from the Govt. or NGOs – preference to be given to women
- ❖ 3 yrs. experience in social sector
- ❖ Tenure of PO to be a minimum of 3 yrs.
- ❖ State govt. to provide necessary office assistance (infrastructure & support staff)

Role of Protection Officer (Section 8)

- ❖ **The PO is under the control and supervision of the Court, and is responsible to the court for cases of domestic violence. PO appointed by State govt.**
 - ♦ To assist the court in the discharge of its functions
 - ♦ To make a Domestic Incident Report (DIR) or application for protection order on behalf of the woman
 - ♦ To ensure the aggrieved woman is provided legal aid
 - ♦ To ensure medical services, safe shelter & information on service providers is provided to the woman
 - ♦ To ensure that orders for monetary relief are complied with

- ❖ **PO can be penalized** for failing/refusing to discharge his duty (previous sanction of State govt. necessary)

- ♦ To prepare a safety plan (Form V of the Rules)
- ♦ To invite applications from SPs, Counselors, maintain records of support services & all documents related to the matter
- ♦ **Emergency action** : If PO receives information of case of DV through email/ telephone etc., shall reach place of occurrence with Police immediately & record a DIR & present it to Magistrate for appropriate order, **without any delay**

Role of Protection Officer (Under the Rules)

- ❖ **With direction of Court (Rule 10) :**
 - ♦ Conduct home visit & make enquiry before grant of ex-parte interim order
 - ♦ Conduct enquiry on assets, bank accounts or other documents
 - ♦ Restore possession of personal effects & shared household to aggrieved woman & assist her in regaining custody of children
 - ♦ Assist the court in enforcement of orders passed
 - ♦ Any other duty assigned by state govt. or court
- ❖ **Without direction of Court (Rules 8 & 9) :**
 - ♦ To inform aggrieved woman of her rights

Role of Service Providers (Section 10)

- ❖ Service Providers are org. regd. under Companies Act/Societies Registration Act. They will have to **register with State govt. as Service Providers**. (These are generally NGOs working for women's rights - SPs)
- ❖ To record the Domestic Incident Report & forward it to Magistrate
- ❖ To get the person aggrieved medically examined
- ❖ To ensure that the aggrieved person is provided shelter in a shelter home, if she so requires

Note :

A service provider is protected for all actions done in good faith in exercise of the powers under this Act towards the prevention of commission of domestic violence.

[Section 10(3)]

Duty to inform Aggrieved Person of her Rights by Police Officer, Protection Officer, Service Provider or Magistrate on receipt of Complaint (Section 5)

- ❖ Right to make an application for relief under this Act.
- ❖ Availability of services of the Service Providers and Protection Officers.
- ❖ Right to free legal aid
- ❖ Right to file a complaint under Section 498A IPC.

Role of the Police (PWDVA & Existing Laws)

❖ **Role under PWDVA :**

1. Complaint of DV can be lodged directly with Police. Police required to **record a DIR** on lodging of complaint. DIR to be forwarded to PO & Magistrate
 2. Police to assist in enforcing court orders
- ❖ The Police continue to play their role under existing laws & take appropriate action (investigation, arrest etc.) for **cognizable offences under IPC** – offences like grievous hurt, rape, dowry death, Section 498A used in domestic violence cases (Section 36)
 - ❖ Once a complaint of domestic violence received by Police, must record a DIR under PWDVA

Duties of Regd. Shelter Homes, Medical Facilities (Sections 6 – 7)

- ❖ Shelter homes & Medical facilities to register with the State govt. under the Act
- ❖ **Shelter homes** shall be bound to provide the woman with shelter if approached by the woman or the PO.
- ❖ **Medical facilities** shall be bound to provide medical aid if approached by the woman or the PO.

Duties of Government (Central & States)

- ❖ To ensure that the **Act is given wide publicity** through public media at regular intervals
- ❖ To give periodic **sensitization & awareness training** to all functionaries (govt. officers, police & the judiciary)
- ❖ Effective coordination between services provided by all ministries & departments concerned & **conduct periodic review**
- ❖ Ensure that **Protocols for functionaries (including courts)** are prepared & put in place

Counseling & Assistance of Welfare Expert

- ❖ **Appointment of counselor (Rule 13) :**
 - a. To be appointed fm list of available counselors forwarded to Magistrate by PO
 - b. Preferably a woman
 - c. A person interested/connected with the case or parties & any legal practitioner who has appeared for respondent in the case or any connected proceeding, not to be appointed as Counselor
- ❖ **Under Section 15**, Magistrate may also secure **assistance of Welfare Expert** (preferably a woman) in discharge of her functions

- ❖ **State govts to appoint POs & register SPs** under the Act. List of SPs must be given to POs & published in newspapers & govt. websites
- ❖ **Budgetary allocations are the responsibility of state govts**

Counseling under PWDVA (Section 14 & Rule 14)

- ❖ The **primary objective of counseling** under the Act is to end DV & to ensure **the victim is in a position to take an informed decision.**
- ❖ U/Section 14, Magistrate may direct the parties, singly or jointly to undergo counseling, at any stage of proceedings. Counselor to be a member of a service provider.
- ❖ The perpetrator of violence **will not be allowed to justify his acts** of violence at the stage of counseling. **[Rule 14(5)]**
- ❖ The respondent to furnish undertaking before counseling proceeding begins that he will refrain fm causing further domestic violence & in appropriate cases, refrain fm all communication with the woman **[Rule 14(6)]**

- ❖ Counselor's efforts shall focus on remedial and redressal measures.
- ❖ Settlement of matter shall only be attempted on request by aggrieved person.

- ❖ **Non-resolution of dispute through Counseling**
- ❖ Court shall continue with proceedings under the Act, following report by counselor.

Counseling under PWDVA Contd.

Procedure for Counseling :

- ❖ Parties directed to undergo counseling by Magistrate – Counselor appointed
- ❖ Respondent to furnish undertaking & the objective of counseling under the Act to be complied with by counselor & parties
- ❖ **Resolution of dispute through settlement (only if the woman desires)**
 - ♦ Counselor will records terms of settlement of dispute, ensure endorsement by both parties and submit to court for passing of an order
 - ♦ Court will satisfy itself that terms of settlement arrived at with consent of parties

Functions of the Judiciary

- ❖ Application for relief (**Section 12**) can be filed directly before court. It is not necessary to approach PO first or to record a DIR before filing an application in court
- ❖ Putting an **immediate end to violence must be the chief consideration of the judge** (grant of interim relief, ex parte order in emergency situations, speedy disposal of application etc.)
- ❖ Judge must keep in mind the **objective behind the law** – sensitization & training of judges essential
- ❖ **Responsibility to supervise & issue appropriate directions to PO. Ensure that the POs fulfill their duties**

- ❖ Duty to inform the woman of her rights under the PWDVA (Section 5)
- ❖ Court to follow criminal procedure (CrPC). But **can also formulate its own procedure** (Section 28) – Important where applications filed in pending litigation (the procedure of the court in which matter is pending to be used)

PWDVA In the Courts Contd.

- ❖ **Shalu Bansal Case** – Aftermath of Batra judgment by SC. MM in Delhi rejected application for right to reside in self-acquired house of FIL & BIL. But the court innovatively used the law, taking into account need for immediate relief - directed respondents to provide rent for separate accommodation as maintenance to her.

PWDVA In the Courts

- ❖ **Supreme Court on “shared household” in S.R. Batra v. Taruna Batra I (2007) DMC 1SC** : Mandatory injunction from dispossession sought by the woman. PWDVA came into force in the meantime. Counsel referred to Section 17 of Act.
 - ♦ SC held “shared household” under Act cannot include self-acquired property of in-laws. No relief given as property not owned by husband or joint family prop. [Sections 2(s) & 17 – **ownership irrelevant to right to reside under the PWDVA**]
 - ♦ Also, court stated that “lives or at any stage, has lived” could be construed to include anywhere that they have lived together [**distinction between living as cohabiters & visitors becomes important here**]
 - ♦ Pattern of families in India & reality of NRI marriages must not be ignored by the courts

What Remains to be Done

- ❖ Appointment of Protection Officers
- ❖ Encouraging registration of Service Providers (NGOs)
- ❖ Training and sensitization programs for functionaries, including members of the judiciary

Note :

Primary responsibility for dissemination of the law on Central & state governments (Section 11)