
UNIT 7 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Structure

- 7.0 Introduction
- 7.1 Objectives
- 7.2 The Protection of Women from Domestic Violence Act, 2005
 - 7.2.1 Objectives of the Act
 - 7.2.2 Some Specific Terms Defined
 - 7.2.3 Powers and Duties of Protection Officers and Service Providers
 - 7.2.3.1 Information to Protection Officer and Exclusion of Liability of Informant
 - 7.2.3.2 Duties of Police Officers, Service Providers and Magistrate
 - 7.2.3.3 Duties of Shelter Homes
 - 7.2.3.4 Duties of Person In-charge of Medical Facilities
 - 7.2.3.5 Appointment of Protection Officers
 - 7.2.3.6 Duties and Functions of Protection Officer
 - 7.2.3.7 Service Providers
 - 7.2.4 Duties of the Government
 - 7.2.5 Procedure for Obtaining Orders of Relief
 - 7.2.5.1 Protection Orders
 - 7.2.5.2 Residence Orders
 - 7.2.5.3 Monetary Relief
 - 7.2.5.4 Custody Orders
 - 7.2.5.5 Compensation Orders
 - 7.2.6 Power to Grant Interim and Ex-parte Orders
 - 7.2.6.1 Court to Give Copies of Orders Free of Cost
 - 7.2.6.2 Duration and Alteration of Orders
 - 7.2.7 Relief in Other Suits and Legal Proceedings
 - 7.2.8 Jurisdiction
 - 7.2.8.1 Appeal
 - 7.2.9 Penalty for Breach of Presiding Officer's Order by Respondent
 - 7.2.9.1 Cognizance of Offences
 - 7.2.9.2 Penalty for not Discharging Duty by Protection Officer
 - 7.2.9.3 Cognizance of Offence Committed by Protection Officer
 - 7.2.9.4 Protection of Action taken in Good Faith
 - 7.2.9.5 Power of Central Government to make Rule
- 7.3 Let Us Sum Up
- 7.4 Answers to 'Check Your Progress' Questions
- 7.5 References

7.0 INTRODUCTION

Women constitute about one-half of the global population. Branded as a “weaker sex” they have been subjected to man’s sense of male superiority and dominance. For centuries we have been taught that it is ‘natural’ for men to protect and dominate and for women to respect and defer.

The women are subjected to exploitation both in the house and outside the house. The gender based violence is faced by the women throughout their life. The violence against women has become a global problem. The number of legislations enacted proved insufficient to improve the status of woman. The moment she goes out of the house to complain about harassment and violence, she is not accepted in both the houses – maternal and matrimonial. Any type of proceedings against the husband or in-laws affects the continuation of matrimonial home.

Women are still being treated as commodity and as a result atrocities on women are increasing. It is popular misconception that the home is a place of security and safety; violence only occurs outside the home. In almost all over the world in the recent past there has been persistent and frequent commission of domestic violence against women violating their basic human right of dignity and honour. India is no exception to it.

The felt need to have a comprehensive legislation on domestic violence has resulted in enactment of *The Protection of Women from Domestic Violence Act 2005*. It gives an exhaustive definition of 'domestic violence'. This enactment is legislated with a hope that the legislation will act as deterrent to the domestic violence acts. This Act came into effect from 26th October 2006. In this unit we attempt to present to you the important aspects of this Act.

7.1 OBJECTIVES

After you go through this Unit, we expect you to be able to:

- Appreciate the objectives with which the Act was made;
- Explain the broad features and provisions of the Act; and
- Identify and contextualize the ways and means in which the Act would be helpful in protecting the women against domestic violence.

7.2 THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The Act consists of 37 sections. The act is civil in nature, and it is in addition to other existing legislations. It is a general law and applies to all the citizens irrespective of religion, caste and culture. It extends to the non-resident Indians also. But, the execution process becomes difficult.

7.2.1 Objectives of the Act

The objectives of the Act include the following.

- i) The act is intended to protect the women and make the legislation effective in real sense.
- ii) The act does not apply anything done to a women elsewhere outside than the domestic environment. The act assures protection for women against deprivation of her right to life by the male members of the family and not females except in case where such woman is married woman.
- iii) Domestic violence is undoubtedly a human right issue. The state acts through this legislation to protect women against violence of any kind that takes place within the family.

- iv) It is intended to protect and promote gender equality within the meaning of Articles 14, 15, 21 of the Indian Constitution and to provide for a remedy to women under the civil law from being victims of domestic violence in the family.
- v) It extends to those women who are in living relationship with the abusers where both the parties have lived together in shared house-hold and are related by consanguinity/marriage. The relationships with family members living together as a joint family are also included.
- vi) It gives the exhaustive definition of the word 'Domestic Violence' and ensures the right of the residence or securing the house-holds to the woman.
- vii) It empowers the Magistrate to pass protection orders in favour of the aggrieved women, besides providing for the appointment of Protection Officers and Service Providers involving the Non-Governmental organizations.

7.2.2 Some Specific Terms Defined

Section 2 deals with the definitions of certain expressions used in the Act. The expressions 'aggrieved person', 'domestic relationship', 'domestic violence', 'domestic incident report,' 'shared household' and 'Protection officers', which are new to the law, are explained in this 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. A daughter is not aggrieved person against mother or sister, but can be against father and brother. The legislation covers not only wife but extends to "women" — sisters, widows, mothers, single women, concubine or mistress.
- 'Domestic incident report' means a report made in the prescribed form on receipt of a complaint of domestic violence from an aggrieved person.
- 'Domestic relationship' means 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.
- Domestic violence: Any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it:
 - a) harms or injures or endangers the health, safety, life, limb or wellbeing, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse; or
 - b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
 - c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or
 - d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation 1: For the purpose of this section —

- i) 'physical abuse' means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
- ii) 'sexual abuse' includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
- iii) 'verbal and emotional abuse' includes:
 - a) insult, ridicule, humiliation, name-calling and insults or ridicule specially with regard to not having a child or a male child; and
 - b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
- iv) 'economic abuse' includes:
 - a) deprivation of all or any economic or financial resource to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property jointly or separately owned by the aggrieved person, payment or rental related to the shared household and maintenance;
 - b) disposal of household effects, any alienation of assets whether movable or immovable, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
 - c) prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household.

Section 3: The act provides comprehensive definition of 'domestic violence'. Even single act or series of acts of commission or omission may constitute domestic violence. There is no limitation of time for filling of incidence report. For the purpose of deciding the 'domestic violence', over-all facts and circumstances of the case shall be taken into consideration. The word violence, cruelty or harassment has been widened. So the words 'domestic relationship' and 'domestic violence' have been used. It covers not only wife but other females in the house.

7.2.3 Powers and Duties of Protection Officers and Service Providers

Here, we will focus on the information related to different protection officers and the services they provide in protecting the women against domestic violence.

7.2.3.1 Information to Protection Officers and Exclusion of Liability of Informant

Section 4 deals with protection officers.

- 1) any person who has reason to believe that an act of domestic violence has been, or is being, or is likely to be committed, may give information about it to the concerned Protection Officer.
- 2) No liability, civil or criminal, shall be incurred by any person for giving in good faith of information for the purpose of sub-section (1).

7.2.3.2 Duties of Police Officers, Service Providers and Magistrate

A Police Officer, Protection Officer, Service Provider or Magistrate who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him, shall inform the aggrieved person (Section 5):

- a) of her right to make an application for obtaining a relief by way of a protection order, an order for monetary relief, a custody order, a residence order, a compensation order or more than one such order under this Act;
- b) of the availability of services of Service Providers;
- c) of the availability of services of the Protection Officers;
- d) of her right to free legal services under the Legal Services Authorities Act, 1987 (39 of 1987);
- e) of her right to file a complaint under Section 498A of the Indian Penal Code (45 of 1860) wherever relevant.
 - Provided that nothing in this Act shall be construed in any manner as to relieve a police officer from his duty to proceed in accordance with law upon receipt of information as to the commission of a cognizable offence.

7.2.3.3 Duties of Shelter Homes

If an aggrieved person or on her behalf a Protection Officer or a Service Provider requests the person in charge of a shelter home to provide shelter to her, such person in charge of the shelter home shall provide shelter to the aggrieved person in the shelter home (Section 6).

7.2.3.4 Duties of Person In-charge of Medical Facilities

If an aggrieved person or, on her behalf a Protection Officer or a Service Provider requests the person in charge of a medical facility to provide any medical aid to her, such person in charge of the medical facility shall provide medical aid to the aggrieved person (Section 7).

7.2.3.5 Appointment of Protection Officers

Appointment of Protection Officers is dealt with in Section 8.

- The State Government shall, by notification, appoint such number of Protection Officers in each district as it may consider necessary and shall also notify the area or areas within which a Protection Officer shall exercise the powers and perform the duties conferred on him by or under this Act.

- The Protection Officers shall, as far as possible, be women and shall possess such qualifications and experience as may be prescribed.
- The terms and conditions of service of the Protection Officer and the other officers subordinate to him shall be such as may be prescribed.

7.2.3.6 Duties and Functions of Protection Officers

Duties and functions of Protection Officers are given under Section 9.

1) It shall be the duty of the Protection Officer:

- to assist the Magistrate in the discharge of his functions under this Act.
- to make a 'domestic incident report' to the Magistrate, in such form and in such manner as may be prescribed, upon receipt of a complaint of domestic violence and forward copies thereof to the police officer in charge of the police station within the local limits of whose jurisdiction domestic violence is alleged to have been committed and to the service providers in that area.
- to make an application in such form and in such manner as may be prescribed to the magistrate, if the aggrieved person so desires, claiming relief for issuance of a protection order;
- to ensure that the aggrieved person is provided legal aid under the Legal Services Authorities Act, 1987 (39 of 1987) and make available free of cost the prescribed form in which a complaint is to be made;
- to maintain a list of all service providers providing legal aid or counseling, shelter homes and medical facilities in a local area within the jurisdiction of the Magistrate;
- to make available a safe shelter home, if the aggrieved person so requires and forward a copy of his report of having lodged the aggrieved person in a shelter home to the police station and the Magistrate having jurisdiction in the area where the shelter home is situated;
- to get the aggrieved persons medically examined, if she has sustained bodily injuries and forward a copy of the medical report to the police station and the Magistrate having jurisdiction in the area where the domestic violence is alleged to have been taken place;
- to ensure that the order for monetary relief under Section 20 is complied with and executed, in accordance with the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974); and
- to perform such other duties as may be prescribed.

2) The Protection Officer shall be under the control and supervision of the Magistrate, and shall perform the duties imposed on him by the Magistrate and the Government by, or under, this Act.

7.2.3.7 Service Providers

Section 10 deals with Service Providers.

1) Subject to such rules as may be made in this behalf, any voluntary association registered under the Societies Registration Act, 1860 (21 of 1860) or a

company registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force with the objective of protecting the rights and interests of women by any lawful means including providing legal aid, medical, financial or other assistance shall register itself with the State Government as a service provider for the purposes of this Act.

- 2) A service provider registered under sub-section (1) shall have the power to:
 - a) record the domestic violence incident report in the prescribed form if the aggrieved persons so desires and forward a copy thereof to the Magistrate and to the Protection Officer having jurisdiction in the area where the domestic violence took place;
 - b) get the aggrieved person medically examined and forward a copy of the medical report to the Protection Officer and the police station within the local limits of which the domestic violence took place;
 - c) ensure that the aggrieved person is provided shelter in a shelter home, if she so requires and forward a report of the lodging of the aggrieved person in the shelter home to the police station within the local limits of which the domestic violence took place.
- 3) No suit, prosecution or other legal proceeding shall lie against any service provider or any member of the service provider who is, or who is deemed to be, acting or purporting to act under this act, for anything which is in good faith done or intended to be done in the exercise of powers or discharge of functions under this act towards the prevention of the commission of domestic violence.

Check Your Progress

- Notes:** a) Space given below the question is for writing your answer.
b) Check your answer with the one given at the end of this unit under "Answers to 'Check Your Progress' Questions."

1) Explain the necessity of 'Protection of Women from Domestic Violence Act' along with significance of powers and duties of Protection Officers and Service Providers.

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

7.2.4 Duties of the Government

Section 11 deals with the duties of government.

The Central Government and every State Government, shall take all measures to ensure that:

- the provisions of this act are given wide publicity through public media including the television, radio and the print media at regular intervals;
- the Central Government and State government officers including the police officers and the members of the judicial services are given periodic sensitization and awareness training on the issues addressed by this Act.
- effective co-ordination between the services provided by concerned Ministries and Departments dealing with law, home affairs including law and order, health and human resources to address issues of domestic violence and periodical review of the same is conducted;
- the Protocols for the various Ministers concerned with the delivery of services to women under this Act including the courts are prepared and put in place.

On receiving the report of aggrieved women, police officer, protection officer, service provider or magistrate shall inform the woman of her right to make an application for obtaining a relief by way of a protection order, a compensation order as mentioned under this section.

7.2.5 Procedure for Obtaining Orders of Relief

Section 12 deals with the procedure for obtaining orders of relief. It states:

- 1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this act.
- 2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:
 - Provided that where a decree for any amount as compensation or damages has been passed by any Court in favor of the aggrieved person, the amount, if any, paid if payable in pursuance of the order made by the Magistrate under this Act shall be set-off against the amount payable under such decree and the decree shall, notwithstanding, anything contained in the C.P.C 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set-off.
- 3) Every application under subsection (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.
- 4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.
- 5) The magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

Under Section 13, a notice of the date of hearing fixed under Section 12 shall be given by the Magistrate to the Protection officer, who shall get it served on the respondent within a maximum period of two days or such reasonable time. A declaration of service of notice shall be the proof that the notice is served.

Under Section 14, the Magistrate may direct the respondent to undergo counseling. The Magistrate in such case shall fix the next date of hearing of the case within a period of two months.

Under Section 16, the Magistrate considers that the circumstances of the case so warrant he may conduct the proceedings in camera.

Section 17 assures that every woman in a domestic relationship shall have the right to reside in the shared house-hold, whether or not she has any right or title. The respondent shall not evict the aggrieved person from the shared household or any part of it. 'Shared household' means owned or rented where the aggrieved person has lived in the domestic relationship with the respondent or with joint family. The right of residence is higher right when compare to residential right in any other legislations and this right extends to joint prosperities in which the husband has a right of share. The women has right to reside in shared household.

7.2.5.1 Protection Orders

Section 18: The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from:

- committing any act of domestic violence;
- aiding or abetting in the commission of acts of domestic violence;
- entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- causing violence to the dependants, other relatives or any person who gives the aggrieved person assistance from domestic violence;
- committing any other act as specified in the protection order.

7.2.5.2 Residence Orders

Section 19 deals with Residence Orders.

- 1) While disposing of an application under sub-section (1) of Section 12, the magistrate may, on being satisfied that domestic violence has taken place, pass a residence order:

- a) restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;
 - b) directing the respondent to remove himself from the shared household;
 - c) restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;
 - d) restraining the respondent from alienating or disposing off the shared household or encumbering the same;
 - e) restraining the respondent from renouncing his rights in the shared household except with the leave of the magistrate; or
 - 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;
 - Provided that no order under clause (b) shall be passed against any person who is a woman.
- 2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
 - 3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
 - 4) An order under sub-section (3) shall be deemed to be an order under Chapter VII of the Code of Criminal procedure, 1973 (2 of 1974) and shall be dealt with accordingly.

While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer in charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

The Magistrate may direct the officer in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to. The protection under this provision assures that she should not be thrown out of the house overnight.

7.2.5.3 Monetary Relief

Section 20 deals with monetary relief.

- 1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child

of the aggrieved person as a result of the domestic violence and such relief may include, but not limited to:

- the loss of earnings;
 - the medical expenses;
 - the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and
 - the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.
- 2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved persons is accustomed.
 - 3) The Magistrate shall have the power to order an appropriate lump-sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.
 - 4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the resident resides.
 - 5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).
 - 6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

7.2.5.4 Custody Orders

Section 21: Notwithstanding anything contained in any other law for the time being in force, the Magistrate may, at any stage of hearing of the application for protection order or for any other relief under this Act, grant temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent.

- Provided that if the Magistrate is of the opinion that any visit of the respondent may be harmful to the interests of the child or children, the Magistrate shall refuse to allow such visit.

7.2.5.5 Compensation Orders

Section 22: In addition to other reliefs as may be granted under this Act, the Magistrate may on an application being made by the aggrieved person, pass an order directing the respondent to pay compensation and damages for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence committed by that respondent.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

2) Mention different relief orders available under this Act.

.....
.....
.....
.....
.....
.....

7.2.6 Power to Grant Interim and Ex-parte Orders

Section 23: In any proceeding before him under this act, the Magistrate may pass such interim order as he deems just and proper.

If the Magistrate is satisfied that an application prima facie discloses that the respondent is committing, or has committed an act of domestic violence or that there is a likelihood that the respondent may commit an act of domestic violence, he may grant an ex-parte order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Section 18, Section 19, Section 20, Section 21 or, as the case may be, Section 22 against the respondent.

7.2.6.1 Court to Give Copies of Order Free of Cost

Section 24: The Magistrate shall, in all cases where he has passed any order under this Act, order that a copy of such order, shall be given free of ‘cost’, to the parties to the application, the police officer in-charge of the police station in the jurisdiction of which the Magistrate has been approached, and any service provider located within the local limits of the jurisdiction of the court and if any service provider has registered a domestic incident report, to that service provider.

7.2.6.2 Duration and Alteration of Orders

Section 25: A protection order made under section 18 shall be in force till the aggrieved person applies for discharge.

If the magistrate, on receipt of an application from the aggrieved person or the respondent, is satisfied that there is a change in the circumstances requiring alteration, modification or revocation of any order made under this Act he may, for reasons to be recorded in writing pass such order, as he may deem appropriate.

7.2.7 Relief in Other Suits and Legal Proceedings

Section 26: Any relief available under Sections 18, 19, 20, 21 and 22 may also be sought in any legal proceedings, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceedings was initiated before or after the commencement of this Act.

Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceedings before a civil or criminal court.

In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.

7.2.8 Jurisdiction

Section 27 specifies the competent court under the Act.

1) The court of judicial Magistrate of the first class or the Metropolitan Magistrate, as the case may be, within the local limits of which:

- the person aggrieved permanently or temporarily resides or carries on business or is employed; or
- the respondent resides or carries on business or is employed; or
- the cause of action has arisen,

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

2) Any order made under this act shall be enforceable throughout India.

7.2.8.1 Appeal

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.

The protection officers and members of service providers under Section 30, while acting or purporting to act in pursuance of any of the provisions of this Act or any rules or orders made thereunder shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

7.2.9 Penalty for Breach of Protection Officer's Order by Respondent

Section 31: A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

While framing charges under sub-section (1), the Magistrate may also frame charge under section 498A of the Indian Penal code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclosed the commission of an offence under those provisions.

7.2.9.1 Cognizance of Offences

Section 32: Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sub-section (1) of Section 31 shall be cognizable and non-bailable.

Upon the sole testimony of the aggrieved person, the court may conclude that an offence under sub-section (1) if section 31 has been committed by the accused.

7.2.9.2 Penalty for not Discharging Duty by Protection Officer

Section 33: If any Protection Officer fails or refuses to discharge his duties as directed by the Magistrate in the protection order without any sufficient cause, he shall be punished 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.

7.2.9.3 Cognizance of Offence Committed by Protection Officer

Section 34: No prosecution or other legal proceeding shall lie against the Protection Officer unless a complaint is filed with the previous sanction of the State Government or an officer authorized by it in this behalf.

7.2.9.4 Protection of Action taken in Good Faith

Section 35: No suit, prosecution or other legal proceeding shall lie against the Protection Officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act or any rule or order made thereunder.

7.2.9.5 Power of Central Government to make Rule

- 1) The Central government may, by notification, make rules for carrying out the provisions of this Act.
- 2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
 - a) the qualifications and experience which a Protection Officer shall possess under sub-section (2) of Section 8;
 - b) the terms and conditions of service of the Protection officers and the other officers subordinate to him, under sub-section (3) of Section 8;
 - c) the form and manner in which a domestic incident report may be made under clause (b) of sub-section (1) of Section 9;
 - d) the form and the manner in which an application for protection order may be made to the Magistrate under clause (c) of sub-section (1) of Section 9;
 - e) the form in which a complaint is to be filed under clause (d) of sub-section (1) of Section 9;
 - f) the other duties to be performed by the Protection officer under clause (i) of sub-section (1) of Section 9;
 - g) the rules regulating registration of service providers under sub-section (1) of Section 10;
 - h) the form in which an application under sub-section (1) of Section 12 seeking reliefs under this Act may be made and the particulars which such application shall contain under sub-section (3) of that section;

- i) the means of serving notices under sub-section (1) of Section 13;
- j) the form of declaration of service of notice to be made by the Protection Officer under sub-section (2) of Section 13;
- k) the qualifications and experience in counseling which a member of the service provider shall possess under sub-section (1) of Section 14;
- l) the form in which an affidavit may be filed by the aggrieved person under sub-section (2) of Section 23; and
- m) any other matter which has to be, or may be, prescribed.

7.3 LET US SUM UP

To sum-up, we can highlight the salient features of the Act as follows.

- The Domestic Violence report is treated as civil case.
- The aggrieved party need not approach the police station for necessary proceedings. She can file an incidence report to the Judicial Magistrate.
- The respondent is not addressed as accused.
- The application filed by the aggrieved party is, not treated as 'FIR' but treated as 'Domestic Violence Report'.
- Creation of protection officer and service provider is an innovative scheme. They are vested with a duty to help the aggrieved right from the time the domestic violence takes place or reported.
- Right to residence is provided as a higher right.
- Maintenance, custody of the children and compensatory orders made available to the aggrieved immediately.
- Quick remedy is available. The magistrate is empowered to issue a notice to the respondent within two days and fix up third day for hearing the case.
- The Magistrate shall dispose of the case within 60 days.
- Magistrate is empowered to issue interim and ex-parte orders.
- The Magistrate is empowered to execute the orders issued by him without being moved for execution.
- In cases where there is no evidence except the testimony of the aggrieved women, it shall be relied upon in deciding.
- There is no second appeal provided under the Act. The aggrieved women is not humiliated by moving to the higher courts and wait for the decision.
- Criminal prosecution for offences like 498A, Dowry Prohibition Act etc are not prohibited as this Act is not substitute to other legislations.
- Accountability of protection officer is assured; failing which PO is liable for punishment.
- Involvement of police officer is not totally excluded.
- The Act is only a protective legislation and not a punishing legislation. The matrimonial relationship may not be strained as in the case of criminal cases.

- Recommendation of CEDAW is achieved as it is an important woman's right issue.
- It is statutory responsibility of Govt. to give wide publicity through public media like, T.V. radio and print media.
- This Act is only protective legislation but not a punishing legislation.
- Relief provided under this Act is only temporary.
- There is no apprehension of arrest, custody and prosecution of the respondent. This may lead to amicable settlement of matrimonial problem.
- The respondent attitude towards women may not be unpleasant as it involves civil proceedings.
- Filing of criminal cases like 498-A or dowry harassment may further aggravate the relationship resulting more broken homes.
- Multiple package of remedies are available like custody of children, monetary relief, etc.
- It is also observed that 498A and criminal legislation are abused or misused by the women. No such allegation arises under this Act.
- Exclusive protection officers under the act are not appointed. Additional responsibility is conferred on the project officers which weakens the cause of the women.
- Provisions have been made for counseling.
- Interim compensation can also be given.
- The definition of 'physical abuse' has been enlarged and made specific.

We can appreciate that the Act is overwhelming in assuring the protection to the women. However, most often, it may not be practicable for the Magistrate to hear the case in four days and dispose the case in 60 days as provided for in the Act.

7.4 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) The Protection of Women from Domestic Violence Act, 2005 is very much required for the following reasons: The harmony of matrimonial home is the choice of a healthy society. Women are subjected to domestic violence, which almost became a global phenomenon. Though a number of legislations exist, they are not providing satisfactory protection to the women in respect of violence both in the house and in the society. The better, effective and easily approachable legislation is felt as the need, and hence this legislation is enacted with a hope that it will act as an effective deterrent to the domestic violence.

The significance of powers and duties of Protection Officers and Service Providers lies in the following: They assist the Magistrate in the discharge of his functions under the Act. They make a domestic violence incidence report, provide legal aid and maintain a list of service providers, shelter homes and medical facilities in the local area. Further, monetary relief to the victim under the Act is ensured.

- 2) The relief orders available under this Act include the following: Residence orders, monetary relief orders, custody orders for children and compensation orders.

7.5 REFERENCES

Amees Yajnik. 1999. "Domestic Violence and Protection of Human Rights", *All India Reporter*, p.289.

Baig, R. K. 1999. "Domestic Violence against Women — Criminal Justice Response in India", *Criminal Law Journal*, January.

Dewan, V. K. 2009. *The Law relating to Offences Against Women*. Hyderabad: S. P. Gogia.

Reddy, G. B. 2007. *Women and Law*. Hyderabad: Gogia Law Agency.

Swaroop, R. 2010. *New Law on Domestic Violence*. Hyderabad: ALD publications.

The Protection of Women From Domestic Violence Act, 2005 (Act No.43 of 2005) (Bare Act).

Udaya laxmi. M. 2007. *Gender Justice - Domestic Violence Act — A Critical Study*. AILD.

ignou
THE PEOPLE'S
UNIVERSITY