



The Protection of Women From Domestic Violence Act, 2005

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Some facts about Domestic Violence

- Out of 1.5 lakh crimes registered annually, about 50,000 are related to domestic violence
- About 5 crore women suffer from violence in their homes but only 0.1% report the same
- Mere 2 out of 100 accused are convicted U/s 498-A,IPC
- About 80% of families try to reconcile with husband & family



Law rel.to Domestic Violence

- Laws are plenty
- **Crl.Law**- includes IPC,Cr.P.C.,D.P.Act,1961,Commission of Sati Prevention Act.1987 & Pre-conception &Pre-natal Diagnostic Techniques (Prohibition of Selection) CAct,1994 etc.
- **Civil Law**- includes the Hindu Personal Laws, Muslim Personal Laws, CPC, Law of Torts etc
- **Special Law**- Protection of Women From Domestic Violence Act,2005 (w.e.f.26-10-2006)



Meaning of Dom. Violence

- Physical,sexual,or psychological abuse directed towards one's spouse, partner,or other family member within household.
- Synonymous with intimate partner violence(IPV)
- Occurs in all cultures, races,ethnicities & religions
- Popular emphasis is on woman as victim



The Protection of Women From Domestic Violence Act, 2005

- Aims at more effective protection of rights of women who are victims of family violence
- Provides remedy under civil law intended to protect women from being victimized & to prevent occurrence of d.v. in society
- Defines d.v. (u/s 3) as harm, injury, danger to health, safety, life, limb, well-being whether mental or physical of aggrieved person
- Includes causing physical, sexual, verbal, emotional & economic abuse



Important Definitions

- Aggrieved person - s.2(a)
- Domestic Violence - s.3
- Domestic relationship – s.2(f)
- Respondent - s.2(q)
- Magistrate - s.2(i)
- Protection officer - s.2(n)
- Service Provider - s.10



Procedure for obtaining relief

- Information to P.O.-R.4
- DIR-r.5
- Application to Magistrate-s.12
- Service of notice-s.13
- Counseling-s.14
- Assistance of Welfare Expert-s.15
- Relief by magistrate-Ss.17-22 etc



Relief Granted by magistrates

- Direction to undergo counseling-s.14
- Protection order-s.18
- Residence order-s.19
- Monetary relief-s.20
- Custody order-s.21
- Compensation order-s.22
- Interim & ex-parte orders s.23
- Alteration of orders-s.25



Role of Police

- Duty to inform complainant about right to obtain relief under Act, services of P.O.s & S.P.s, free legal aid, and file complaint u/s 498-A, IPC – S.5
- Duty to proceed as per law if info..received about commission of a cognizable offence- s.5 Proviso
- Action in case of emergency- R.9

Judicial Response to the Act of 2005



- As regards Section 17(1) of the Act, in our opinion 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 property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of appellant No. 2, mother of Amit Batra. Hence it cannot be called a `shared household'. [S.R. Batra vs Smt. Tarun Batra on 15 December, 2006 ,Supreme Court per S.B. Sinha & Markandey Katju JJ]

Judicial Response to the Act of 2005

- Section 2 (q) of the Act reads as under: "**Respondent**" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner".
- whether the proceedings under the Domestic Violence Act are maintainable against women in view of Section 2 (q) of the Act;
- Held that "... female members cannot be made respondents in the proceedings under the Act. "- **[Smt. Menakuru Renuka And Others. vs Smt. Menakuru Mona Reddy. on 22 October, 2008 per JUSTICE P.SWAROOP REDDY of AP High Court]**
- **Afzalunnisa Begum & Ors Vs. The State of A.P. & ors Criminal Petition No. 7160 and 8495 of 2008 pronounced on 02/06/2009** in which the Hon'ble High Court after making detailed analysis of Section 2 (q) read with various provisions of DV Act, 2005 particularly Section 19, 21 together with Statement of Objects and Reasons under Bill No. 116 of 2005 for passing the DV Act has in clear term laid down that **"the 'respondent' as defined under Section 2(q) of the Act includes a female relative of the husband"**.



Domestic Relationship-Whether includes Live-in Relationship

- **D.Velusamy vs D.Patchaiammal** on 21 October, 2010, Supreme Court of India, Per M Katju, T Thakur JJ in Crl. Appeal Nos. 2028-2029 of 2010 [Arising out of Special Leave Petition (Crl.) Nos.2273-2274/2010]
- **The SC held** :-In our opinion a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married :-
(a) The couple must hold themselves out to society as being akin to spouses. (b) They must be of legal age to marry. (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried. (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.
- In our opinion a 'relationship in the nature of marriage' under the 2005 Act must also fulfill the above requirements, and in addition the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a 'domestic relationship'.



Domestic Relationship-Whether includes Live-in Relationship

- “No doubt the view we are taking would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression ‘relationship in the nature of marriage’ and not ‘live in relationship’. The Court in the garb of interpretation cannot change the language of the statute”.
- The Court also distinguished “Alimony” & “Palimony” in the context of USA

SOU. SANDHYA MANOJ WANKHADE v. MANOJ BHIMRAO WANKHADE

[2011] INSC 113 (31 January 2011)

.....in relation to the interpretation of the expression "respondent" in Section 2(q) of the Domestic Violence Act, 2005. For the sake of reference, Section 2(q) of the above-said Act is extracted hereinbelow :- "2(q). "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

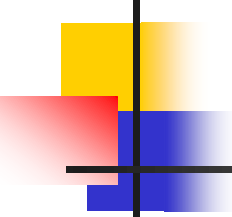
- Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."
- 12. From the above definition it would be apparent that although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.
- 13. It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression 12 "relative", nor has the said expression been specifically defined in the **Domestic Violence** Act, 2005, to make it specific to males only.
- 14. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the **Domestic Violence** Act, 2005.

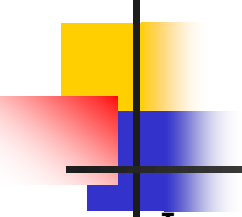


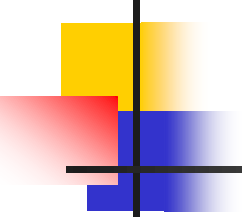
D.VELUSAMY v. D.PATCHAIAMMAL

INSC 886 (21 October 2010)

- 22. It seems to us that in the ...Act of 2005 Parliament has taken notice of a new social phenomenon which has emerged in our country known as **live-in relationship**. This new relationship is still rare in our country, and is sometimes found in big urban cities in India, but it is very common in North America and Europe. It has been commented upon by this Court in *S. Khushboo vs. Kanniammal & Anr.* **(2010) 5 SCC 600** (vide para 31).

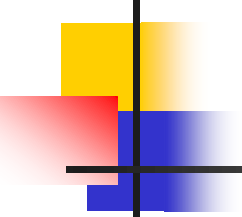
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- 31. In the case before us we are not called upon to decide whether in our country there can be a valid claim for palimony on the basis of a contract, express or implied, written or oral, since no such case was set up by the respondent in her petition under Section 125 Cr.P.C.
 - 32. Some countries in the world recognize common law marriages. A common law marriage, sometimes called de facto marriage, or informal marriage is recognized in some countries as a marriage though no legally recognized marriage ceremony is performed or civil marriage contract is entered into or the marriage registered in a civil registry (see details on Google).
 - 33. In our opinion a 'relationship in the nature of marriage' is akin to a common law marriage. Common law marriages require that although not being formally married :-
 - (a) The couple must hold themselves out to society as being akin to spouses.
 - (b) They must be of legal age to marry.
 - (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
 - (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

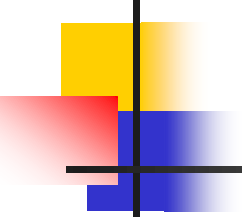
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- In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005.
 - To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage'
 - 35. No doubt the view we are taking would exclude many women who have had a live in relationship from the benefit of the 2005 Act, but then it is not for this Court to legislate or amend the law. Parliament has used the expression 'relationship in the nature of marriage' and not 'live in relationship'. The Court in the grab of interpretation cannot change the language of the statute.
 - 36. In feudal society sexual relationship between man and woman outside marriage was totally taboo and regarded with disgust and horror, as depicted in Leo Tolstoy's novel 'Anna Karenina', Gustave Flaubert's novel 'Madame Bovary' and the novels of the great Bengali writer Sharat Chandra Chattopadhyaya.
 - 37. However, Indian society is changing, and this change has been reflected and recognized by Parliament by enacting The Protection of Women from **Domestic Violence** Act, 2005.

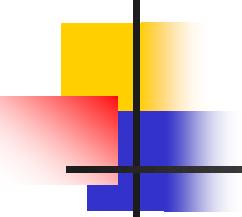
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- 38. Coming back to the facts of the present case, we are of the opinion that the High Court and the learned Family Court Judge erred in law in holding that the appellant was not married to Lakshmi without even issuing notice to Lakshmi. Hence this finding has to be set aside and the matter remanded to the Family Court which may issue notice to Lakshmi and after hearing her give a fresh finding in accordance with law. The question whether the appellant was married to the respondent or not can, of course, be decided only after the aforesaid finding.
 - 39. There is also no finding in the judgment of the learned Family Court Judge on the question whether the appellant and respondent had lived together for a reasonably long period of time in a relationship which was in the nature of marriage. In our opinion such findings were essential to decide this case. Hence we set aside the impugned judgment of the High Court and Family Court Judge, Coimbatore and remand the matter to the Family Court Judge to decide the matter afresh in accordance with law and in the light of the observations made above. Appeals allowed.

BHANOT [2012] INSC 100 (7 February 2012)

- The attitude displayed by the Petitioner has once again thrown open the decision of the High Court for consideration. We agree with the view expressed by the High Court that in looking into a complaint under Section 12 of the PWD Act, 2005, **the conduct of the parties even prior to the coming into force of the PWD Act, could be taken into consideration while passing an order under Sections 18, 19 and 20 thereof.** In our view, the Delhi High Court has also rightly held that even if a wife, who had shared a household in the past, but was no longer doing so when the Act came into force, would still be entitled to the protection of the PWD Act, 2005.

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- 9. On facts it may be noticed that **the couple has no children**. Incidentally, the Respondent wife is at present residing with her old parents, after she had to vacate the matrimonial home, which she had shared with the Petitioner at Mathura, being his official residence, while in service. **After more than 31 years of marriage, the Respondent wife having no children, is faced with the prospect of living alone at the advanced age of 63 years, without any proper shelter or protection and without any means of sustenance except for a sum of Rs.6,000/- which the Petitioner was directed by the Magistrate by order dated 8th December, 2006, to give to the Respondent each month.** By a subsequent order dated 17th February, 2007, the Magistrate also passed a protection-cum-residence order under Sections 18 and 19 of the PWD Act, protecting the rights of the Respondent wife to reside in her matrimonial home in Mathura. Thereafter, on the Petitioner's retirement from service, the Respondent was compelled to vacate the accommodation in Mathura and a direction was given by the Magistrate to the Petitioner to let the Respondent live on the 1st Floor of House No.D-279, Nirman Vihar, New Delhi, and if that was not possible, to provide a sum of Rs.10,000/- per month to the Respondent towards rental charges for acquiring an accommodation of her choice.

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- 10. In our view, the situation comes squarely within the ambit of Section 3 of the PWD Act, 2005, which defines "**domestic violence**" in wide terms, and, accordingly, no interference is called for with the impugned order of the High Court. However, considering the fact that the couple is childless and the Respondent has herself expressed apprehension of her safety if she were to live alone in a rented accommodation, we are of the view that keeping in mind the object of the Act to provide effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family, the order of the High Court requires to be modified. We, therefore, modify the order passed by the High Court and direct that the Respondent be provided with a right of residence where the Petitioner is residing, by way of relief under Section 19 of the PWD Act, and we also pass protection orders under Section 18 thereof. As far as any monetary relief is concerned, the same has already been provided by the learned Magistrate and in terms of the said order, the Respondent is receiving a sum of Rs.6,000/- per month towards her expenses.

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- 11. Accordingly, in terms of Section 19 of the PWD Act, 2005, we direct the Petitioner to provide a suitable portion of his residence to the Respondent for her residence, together with all necessary amenities to make such residential premises properly habitable for the Respondent, within 29th February, 2012. The said portion of the premises will be properly furnished according to the choice of the Respondent to enable her to live in dignity in the shared household. Consequently, the sum of Rs.10,000/- directed to be paid to the Respondent for obtaining alternative accommodation in the event the Petitioner was reluctant to live in the same house with the Respondent, shall stand reduced from Rs.10,000/- to Rs.4,000/-, which will be paid to the Respondent in addition to the sum of 13 Rs.6,000/- directed to be paid to her towards her maintenance. In other words, in addition to providing the residential accommodation to the Respondent, the Petitioner shall also pay a total sum of Rs.10,000/- per month to the Respondent towards her maintenance and day-to-day expenses.

Supreme Court of India

-Relevant Decisions on PWDV Act

- SOU SANDHYA MANOJ WANKHADE v. MANOJ BHIMRAO WANKHADE & ORS [2011] INSC 113 (31 January 2011) [100%]
(From Supreme Court of India; 31 January 2011; 17 KB)
- DVELUSAMY v. DPATCHAIAMMAL [2010] INSC 886 (21 October 2010) [41%]
(From Supreme Court of India; 21 October 2010; 26 KB)
- VDBHANOT v. SAVITA BHANOT [2012] INSC 100 (7 February 2012) [41%]
(From Supreme Court of India; 7 February 2012; 19 KB)
- INDERJIT SINGH GREWAL v. STATE OF PUNJAB & ANR [2011] INSC 737 (23 August 2011) [25%]
(From Supreme Court of India; 23 August 2011; 40 KB)
- SHALEEN KABRA v. SHIWANI KABRA [2012] INSC 287 (8 May 2012) [16%]
(From Supreme Court of India; 8 May 2012; 14 KB)
- DEVENDRA KUMAR SHARMA v. BHAVNA SHARMA [2011] INSC 1097 (10 October 2011) [16%]
(From Supreme Court of India; 10 October 2011; 6 KB)
- AVIRAL BHATLA v. BHAWNA BHATLA [2009] INSC 353 (18 February 2009) [16%]
(From Supreme Court of India; 18 February 2009; 10 KB)

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- [HARPREET SINGH POPLI & ORS v. MANMEET KAUR POPLI & ANR \[2009\] INSC 1718 \(10 November 2009\)](#) [16%]
(From [Supreme Court of India](#); 10 November 2009; 11 KB)
 - [VIMALBEN AJITBHAI PATEL v. VATSLABEEN ASHOKBHAI PATEL AND OTHERS \[2008\] INSC 486 \(14 March 2008\)](#) [16%]
(From [Supreme Court of India](#); 14 March 2008; 47 KB)
 - [MANISH GOEL v. ROHINI GOEL \[2010\] INSC 321 \(5 February 2010\)](#) [16%]
(From [Supreme Court of India](#); 5 February 2010; 25 KB)
 - [CHANMUNIYA v. VIRENDRA KUMAR SINGH KUSHWAHA & ANR \[2010\] INSC 829 \(7 October 2010\)](#) [16%]
(From [Supreme Court of India](#); 7 October 2010; 36 KB)
 - [SGRAJGOPALAN PRABHU & ORS v. VEENA & ANR \[2010\] INSC 547 \(26 July 2010\)](#) [16%]
(From [Supreme Court of India](#); 26 July 2010; 6 KB)
 - [MEDHA KOTWAL LELE & ORS v. UOI & ORS \[2012\] INSC 643 \(19 October 2012\)](#) [8%]
(From [Supreme Court of India](#); 19 October 2012; 35 KB)
 - [RASHMI AJAY KRKESHARWANI v. AJAY KRKESHARWANI AND ORS \[2012\] INSC 328 \(12 March 2012\)](#) [8%]
(From [Supreme Court of India](#); 12 March 2012; 20 KB)
 - [DEEPTI BHANDARI v. NITIN BHANDARI & ANR \[2011\] INSC 1203 \(14 December 2011\)](#) [8%]
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 - [BABY MANJI YAMADA v. UNION OF INDIA & ANR \[2008\] INSC 1656 \(29 September 2008\)](#) [8%]
(From [Supreme Court of India](#); 29 September 2008; 18 KB)
 - [STATE OF UP v. CHHOTAYLAL \[2011\] INSC 55 \(14 January 2011\)](#) [8%]
(From [Supreme Court of India](#); 14 January 2011; 52 KB)



NCRB FIGURES AT A GLANCE-2007

■ Crimes against women

S.No.	Crime Heads	Cases reported	% TO TOTAL IPC CRIMES	RATE OF CRIME	CHARGE-SHEETING RATE	CONVICTION RATE
1	RAPE	20737	1.0	1.8	94.6	26.4
2	DOWRY DEATHS	8093	0.4	0.7	92.8	33.0
3	CRUELTY BY HUSBAND AND RELATIVES	75930	3.8	6.7	93.9	20.9



Impact of Law

- Too early to assess
- If used judiciously, may keep family together
- Care should be taken ensure that normal wear and tear of family-not treated as d.v.
- Glaring lacuna-definition of aggrieved person
- Absolutely essential-Sensibility & sensitivity on part of all players.



Conclusion

Thank You